

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

|                           |   |                            |
|---------------------------|---|----------------------------|
| United States of America, | ) |                            |
|                           | ) | DEFENDANT ANTON JOSEPH     |
| Plaintiff,                | ) | LAZZARO’S MOTION FOR A NEW |
|                           | ) | TRIAL BASED ON JUROR       |
| vs.                       | ) | MISCONDUCT                 |
|                           | ) |                            |
| Anton Joseph Lazzaro,     | ) | Crim. No. 21-173 (PJS/DTS) |
|                           | ) |                            |
| Defendant.                | ) |                            |
|                           |   |                            |
|                           |   | * * *                      |

**MOTION**

Defendant Anton Joseph Lazzaro, through his counsel, Daniel L. Gerds, Esq., respectfully moves the Court for a new trial, pursuant to Federal Rule of Criminal Procedure 33(a) and (b)(1), based on newly discovered evidence of juror misconduct.

**ARGUMENT**

On 31 March 2023, the jury in Mr. Lazzaro’s trial returned its verdicts, starting the clock on the rule’s three-year limit for filing this motion. The new evidence of juror misconduct that has accumulated over the past two years requires a new trial in this case. The evidence discussed in this motion concerns only a single juror – juror number 45.

The standard set by the Supreme Court for granting a new trial based on a juror’s bias states as follows:

a party must first demonstrate that a juror failed to answer honestly a material question on *voir dire*, and then further show that a correct response would have provided a valid basis for a challenge for cause. The motives for concealing information may vary, but only those reasons that affect a juror's impartiality can truly be said to affect the fairness of a trial.

*McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 556 (1984). In *United States v. Tucker*, 137 F.3d 1016, 1026 (8th Cir. 1998), the Eighth Circuit appeared to have construed *McDonough* as requiring a three-pronged showing to obtain the relief of a new trial: “1) that Juror Johnson answered dishonestly, not just inaccurately; 2) that she was motivated by partiality; and 3) that the true facts, if known, would have supported striking her for cause.” *Id.* at 1026. But *Tucker* also was clear that the focus of the inquiry must be on bias rather than dishonesty, and that dishonesty is not strictly required to obtain a new trial:

The opinions concurring and concurring in judgment In *McDonough*, representing five justices altogether, state that dishonesty is merely a factor relevant to the ultimate issue of whether a juror is biased. We have counted the votes in *McDonough* and concluded: “It would thus appear that a juror’s dishonesty is not a predicate to obtaining a new trial. The focus is on bias.”

*Tucker*, 137 F.3d at 1026 n.7 (cleaned up) (quoting *Cannon v. Lockhart*, 850 F.2d 437, 440 (8th Cir. 1988)). *Cannon* had established that even inadvertent nondisclosures may warrant a hearing to inquire into juror bias: “Although here the juror's nondisclosure was purely inadvertent, and certainly not dishonest, the

question is whether her later disclosure indicated a circumstance that would cause her to be prejudiced in her deliberation.” *Id.*

In *Tucker*, the Eighth Circuit found error based on a sufficient proffer of “concealed juror bias” and the district court’s failure to permit a full hearing into the issue: “Tucker has raised enough question about what Johnson knew at the time of voir dire to entitle him to a full hearing on this issue, including crucial credibility determinations.” *Tucker*, at 1027. The remedy in *Tucker* was not a remand for a new trial, but rather a limited remand “with instructions that the district court conduct a full hearing on the issues . . . pertaining to Juror Johnson. *Id.* at 1037.

Applying *McDonough* in an earlier case, however, the Eighth Circuit remanded for a new trial even though the appellant fell short of proving up the second part of the *McDonough* test, concluding that the district court’s failure to conduct a hearing into a juror’s concealed information denied the appellant the opportunity:

Appellant was denied an opportunity to make the required showing that he had a valid basis for a challenge for cause. He may have been denied his Sixth Amendment right to a trial by an impartial jury. We feel compelled to proceed with caution in this area, and therefore reverse and remand the case for a new trial.

*United States v. St. Clair*, 855 F.2d 518, 523 (8th Cir. 1988). The Eighth Circuit’s message to the district courts was clear: “The district court could have remedied this

problem during post-trial proceedings by identifying this juror and questioning him under oath as to his reasons for holding back this pertinent information.” *Id.*

A related question that has never fully been resolved in this Circuit is whether a juror’s bias must be express. In other words, is implied bias sufficient? Although the Eighth Circuit has never affirmatively adopted an implied-bias test for demonstrating juror partiality, neither has it rejected it, noting in several cases that prejudice may indeed be implied in certain “egregious situations.” *Manuel v. MDOW Ins. Co.*, 791 F.3d 838, 843 (8th Cir. 2015); *Sanders v. Norris*, 529 F.3d 787, 792 (8th Cir. 2008) (“a juror may sometimes be presumed biased”); *Fuller v. Bowersox*, 202 F.3d 1053, 1056 (8th Cir. 2000) (“bias may be found either by an express admission, or by proof of specific facts which show such a close connection to the facts at trial that bias is presumed”); *Johnson v. Armontrout*, 961 F.2d 748, 756 (8th Cir. 1992) (“prejudice may be implied in certain egregious situations”).

In this case, although Defendant Lazzaro affirmatively asserts it as an alternative basis for relief, the Court likely does not need to reach the implied-bias issue because the evidence of actual bias is strong. During voir dire, the Court asked the prospective jurors not to read, watch, or listen to the news reports about the case, noting that “[t]his case has received a lot of publicity. It’s received national as well as local publicity, and there are a number of reporters who are covering this trial.” Tr. at 12. Like several others, Juror 45 acknowledged hearing about the case on the

news, and that jury selection would be starting that day. “My son had the news on in our hotel room this morning, and it just said that it was starting today and that was it.” Tr. at 224. Another juror had heard the same news, and provided a little more information:

PROSPECTIVE JUROR 37: I knew he was a fairly young man that donated a lot of money, again, to the Minnesota Republican party. That pretty much covers it, yeah.

THE COURT: Did you read any articles yesterday about this case?

PROSPECTIVE JUROR 37: Read anything? No. I saw it mentioned on the news that they were starting jury selection today. That was about it.

Tr. at 189.

The prospective jurors also knew from the court’s correspondence with their juror questionnaire that the “government has charged the defendant with conspiracy to commit sex trafficking of minors, sex trafficking of minors, and obstructing enforcement of the laws against sex trafficking of minors.” The Court also specifically informed them again at the outset of voir dire that “the Government has charged Mr. Lazzaro with sex trafficking of minors. Specifically, the Government alleges that Mr. Lazzaro paid his co-defendant, whose name is Gisela Castro Medina, to recruit teenage girls to commit commercial sex acts with Mr. Lazzaro.”

Tr. at 14.

One of the questions on the questionnaire was: “Is there any reason why you might not be fair and impartial if you are selected to serve on the jury in this case? If so, please explain.” Juror 45 was the only juror who answered that she could be

“very fair.” Notably, however, despite her sworn averment that she could be very fair, she failed to disclose her bias in favoring the testimony of females over men, and her belief that supporters of Trump (like Mr. Lazzaro) were all “sexual predators” and felons. Considering the nature of the case, and Mr. Lazzaro’s notoriety as a prominent Republican donor, one would expect Juror 45 to have disclosed her very strong beliefs and their potential influence on her partiality – unless, of course, she was both dishonest and biased.

Exhibit A, for example, posted by Juror 45 on the “Occupy Democrats” Facebook group page two years after voir dire, blatantly asserts, in reference to President Trump’s acolytes, “Almost all of his followers are secure [sic] predators or felons.”<sup>1</sup> She repeats the same biased sentiments in Exhibits C and G, in which she makes clear her personal belief that Trump’s followers and appointees are all “child sex traffickers” and “sexual predators.” In a case like this, in which the express charge against a prominent Republican is sex trafficking of minors, it is inconceivable that Juror 45 could have been impartial, and equally incredible that her failure to disclose that bias was merely inadvertent.

This is not a situation in which a potential juror merely espoused politics that are different from those of the defendant on trial, or disfavored a particular politician.

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<sup>1</sup> The autocorrect apparently turned “sexual” into “secure,” but the context and the other newly discovered posts (*see, e.g.*, Exhibit C) make the correct spelling of the commentary clear.

We would not assume that a prospective juror who disliked the Israeli Prime Minister and his politics would be unable to be fair to a defendant who happened to be Jewish. But if the prospective juror believed instead that all Jews on Wall Street were criminals, he should not be seated on that same defendant's securities fraud case in the Southern District of New York.

The newly discovered evidence here shows that Juror 45 has very strong feelings not just about President Trump, but also about everyone who is a "follower" of Trump. And those strong feelings were not merely feelings of disapproval, they were express assertions that his followers were "felons," "sexual predators," and "child sex traffickers." Those strong feelings absolutely precluded the possibility of presuming Mr. Lazzaro to be innocent of the sex-trafficking charges in this case. One must remember also that the television news that informed Juror 45 on the morning of voir dire that Lazzaro was a prominent donor to the Minnesota Republican party was not the only notice of his political affiliations. There were many references specifically to Trump at trial, especially relating to the photograph of Trump posing with Lazzaro on Lazzaro's condominium wall. *See., e.g.,* Trial Tr. at 616 ("I remember he had a picture of Trump too, and we kind of asked about him, and he kind of said he worked with him in a way, I believe").

Exhibit B, "Believe ALL women," posted on 8 June 2024, demonstrates another bias that rendered Juror 45 incapable of impartiality in another key manner

critical to the case: when making credibility determinations regarding the conflicting testimony of a woman and a man. “Believe ALL Women” is not the motto of a juror who can claim to be “very fair” – particularly in the context of this case, in which the Government’s lead witness was a woman alleged to have conspired with Mr. Lazzaro, and the Defendant’s lead witness was a man – Mr. Lazzaro himself. The significance of that express bias in favor of believing the testimony of women cannot be overstated in a case like this, in which the great majority of the Government’s witnesses were females. While Exhibit B is no longer publicly viewable (for unknown reasons), Juror 45 recently doubled down on the bias by reposting the statement in Exhibit E that “we wouldn’t be waiting for a list [of Epstein clients] if we simply believed women.”

Juror 45 also demonstrated an unusual eagerness to be on the jury. Courts have cautioned that zeal to serve on a jury might in itself bespeak partiality: “The individual who lies in order to improve his chances of serving has too much of a stake in the matter to be considered indifferent.” *Dyer v. Calderon*, 151 F.3d 970, 982 (9th Cir. 1998) (en banc). Jury 45’s enthusiasm for serving on this jury manifested itself in several ways. She was, for example, the only person in the venire pool to assert she could be “very fair.” She posted after the trial that she “was one of the *lucky* 12 to be picked for the Anton Lazzaro federal child sex trafficking case.” And during trial, when questioned about whether she could continue to be fair

notwithstanding a concerning discussion in the jury room at the end of the previous trial day, she was the *only* juror to assert that she did not even hear the conversation,<sup>2</sup> and she even cut off the Court mid-question to blurt out her dubious declaration of ignorance:

JUROR 45: I didn't hear anything.

THE COURT: Okay. Well --

JUROR 45: I don't know what's going on, actually, so -- I'm just playing dumb.

THE COURT: So that would be a no. So nothing you've heard in the jury room in the last couple days has affected your ability to be fair?

JUROR 45: No, no.

Tr. at 1364-65. There is ample reason to believe that Juror 45 was not completely honest precisely because she wanted to be one of the “lucky 12” on this jury.

The newly discovered evidence of Juror 45’s partiality is overwhelming. There is zero chance – none – that she could have served fairly in this trial. In the words of the Eighth Circuit’s opinion in *Johnson v. Armontrout*, 961 F.2d 748, 754 (8th Cir. 1992), Juror 45 was “convinced [Lazzaro] was guilty before his trial even started.”

## CONCLUSION

Mr. Lazzaro moves the Court for a new trial based on the juror misconduct identified herein.

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<sup>2</sup> A suspicious assertion at best considering the recollection of the courtroom clerk: “Just to clarify, everybody heard all that conversation? COURTROOM DEPUTY: I believe so. I mean, it was said with all the jurors in the room.” Tr. at 1343.

Dated: 25 August 2025

Respectfully submitted,

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