

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION**

UNITED STATES OF AMERICA

vs.

DAVID ZACHARY SCRUGGS

Case: 3:07CR00192-NBB-SAA

**DEFENDANT DAVID ZACHARY SCRUGGS'S SUPPLEMENTAL MOTION FOR  
RECONSIDERATION OF ANONYMOUS JURY ORDER  
OR FOR ALTERNATIVE RELIEF**

**COMES NOW**, Defendant David Zachary Scruggs, by and through his undersigned attorneys, and respectfully moves this Court for reconsideration of the Court's previous ruling allowing the use of an anonymous jury and for such other relief as set forth below.

**I. INTRODUCTION**

Defendant David Zachary Scruggs previously endorsed the Defendants' Motion for Reconsideration of Anonymous Jury Order, or Alternatively for a Supplemental Jury Questionnaire; for Transfer of Venue; and for Expanded Voir Dire Procedures. Doc. 154. In light of the plea agreements entered by his former co-defendants, Richard Scruggs and Sidney Backstrom, that motion has even greater force. The circumstances of this case have changed so significantly that an anonymous jury is neither necessary nor fair to Zach Scruggs. Moreover, the spike in publicity attendant to the pleas of Dick Scruggs and Sid Backstrom has significantly increased the risk of prejudice to Zach Scruggs. Only a transfer of venue (or perhaps a continuance, to allow the publicity fires to die down), and expanded voir dire, can cure that prejudice.

## II. ARGUMENT

### A. The need for an anonymous jury is further diminished by the pleas of Dick Scruggs and Sid Backstrom

All three of the reasons cited in the previous motion for reconsideration of the anonymous jury order remain pertinent.

*First*, there is no factual basis for the Court's finding that Zach Scruggs would be likely to tamper with the jury pool. In contrast to every Fifth Circuit case that has relied upon interference with the jury process to support an anonymous jury, here the Government has not submitted any evidence that Zach Scruggs has previously attempted to tamper with, intimidate, or harass members of a jury. *See United States v. Edwards*, 303 F.3d 606, 614 (5<sup>th</sup> Cir. 2002); *United States v. Salvatore*, 110 F.3d 1131, 1143-44 (5<sup>th</sup> Cir. 1995); *United States v. Krout*, 66 F.3d 1420, 1428 (5<sup>th</sup> Cir. 1995). This Court's finding that such jury tampering is possible was premised only on the inference that a person accused of conspiring to bribe a judge would be likely to tamper with a jury; but the Fifth Circuit has held that an anonymous jury order cannot be premised on "mere allegations or inferences of potential risk." *Krout*, 66 F.3d at 1427.

*Second*, the potential punishment for Zach Scruggs does not exceed that typical for a multi-count federal indictment, and does not begin to compare with that in other anonymous jury cases. *See* Doc. 154, at 4.

*Third*, the publicity in this case, while extraordinary, does not involve the risk that jurors would be harassed or intimidated. *Id.* "Not all celebrated trials merit an anonymous jury." *United States v. Branch*, 91 F.3d 699, 724 (5<sup>th</sup> Cir. 1996).

The plea agreements of Dick Scruggs and Sid Backstrom make an anonymous jury even

less appropriate. The Government has acknowledged that Zach Scruggs was a minor participant in the conspiracy it alleges he joined: He is mentioned only twice in the Indictment's 25-paragraph description of the conspiracy and its overt acts. Doc. 1, at 4-8. Likewise, while the Court noted the 404(b) conspiracy in its Order granting an anonymous jury, Doc. 146, at 3, Zach Scruggs was not mentioned even once in the Information filed against Joey Langston (attached here as Exhibit A) or in the Government's proffer at Langston's plea hearing (attached here as Exhibit B).<sup>1</sup>

Moreover, Dick Scruggs and Sid Backstrom both testified at their plea hearings, consistent with the Government's factual bases, that they did not set out to corruptly influence a judge but rather were guilty of joining a conspiracy only after Judge Lackey asked for payment of a bribe. Doc. 161; 3/14/08 Change of Plea Hearing as to Richard Scruggs, at 15:16-16:4.

The lack of an affirmative effort by these defendants to *corruptly* influence Judge Lackey until the judge, acting as a federal agent, suggested a bribe dramatically weakens any inference that, because he has been indicted, Zach Scruggs would be likely to tamper with a jury. Had Zach Scruggs been the only member of the Scruggs Law Firm indicted, the Government would never have been able to support their motion for an anonymous jury, and it seems quite likely they never would have made that motion.

Now that Zach Scruggs will be the only defendant, the same standard should apply, and

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<sup>1</sup> The only evidence that the 404(b) evidence implicates Zach Scruggs is the Government's statement at the February 21, 2008 hearing that Joey Langston's testimony "would also implicate Zach Scruggs." 2/21/08 Hearing, at 21:17-18. There is no evidence that has been provided to counsel or the Court indicating that Zach Scruggs has any knowledge whatsoever that anything of value was offered or provided to Judge DeLaughter in exchange for favorable rulings in the Wilson v. Scruggs matter.

the Court should reconsider and deny the Government's motion for an anonymous jury. Use of an anonymous jury in these circumstances would be clear, reversible error.

**B. The Court should issue a revised supplemental juror questionnaire**

For all the reasons described previously, Doc. 154, at 5-7, if the Court moves forward with an anonymous jury, Zach Scruggs is entitled to the benefits of a far more thorough and extensive jury questionnaire. The proposed supplemental juror questionnaire was tailored to reflect the trial of all three defendants. Submitted herewith as Exhibit C is a revised version that has been updated to reflect the current posture of this case. In particular, it removes references to "three defendants" or attorneys for Richard Scruggs and Sid Backstrom; it removes questions about assumptions of guilt as to Richard Scruggs and Sid Backstrom; and it adds a question relating to jurors' abilities to put aside the guilty pleas of co-defendants when addressing the guilt or innocence of Zach Scruggs. This supplemental questionnaire should be sent out to the venirepersons immediately; or the Court should provide it to all venirepersons, and ask them to fill it out, when they arrive in Court on March 31.

**C. The publicity surrounding the pleas of Dick Scruggs and Sid Backstrom make transfer of venue a necessity**

When the Defendants filed the motion renewing their request for a transfer of venue last Wednesday, publicity for this case had already risen to a level practically unheard of in Mississippi for a non-violent criminal case. That publicity skyrocketed over the weekend. Banner headlines announced the guilty pleas of Dick Scruggs and Sid Backstrom in every major newspaper in Mississippi, including the Clarion-Ledger, the Northeast Mississippi Daily Journal, and the Oxford Eagle. Northern Mississippi has been awash in Scruggs-related coverage since

Friday's pleas. The Northeast Mississippi Daily Journal has run another eleven stories about the case since last Friday, the Clarion-Ledger another seven; and countless stories have run in every newspaper, big and small, in the region, as well as on both local television and local radio. The vast majority of these stories point out that Zach Scruggs is the only defendant not to have pled, suggesting his guilt by association.

The prejudice from this extraordinary media coverage will best be cured by a transfer of venue out of Mississippi. Two key factors that favor a transfer of venue are of particular import in light of the recent events: coverage of the guilty pleas of co-defendants, *see Irvin v. Dowd*, 366 U.S. 717, 726 (1961); *Coleman v. Kemp*, 778 F.2d 1484, 1497, 1538 (11<sup>th</sup> Cir. 1985); and proximity between the coverage and the date of trial, *Coleman*, 778 F.2d at 1540 n.23; *United States v. Capo*, 595 F.2d 1086, 1091 (5<sup>th</sup> Cir. 1979); *United States v. Williams*, 523 F.2d 1203, 1205-06 (5<sup>th</sup> Cir. 1975); *Johnson v. Beto*, 337 F. Supp. 1371, 1376 (S.D. Tex. 1972). Richard Scruggs was not just any co-defendant. He was the primary target in this investigation, and one of the most well-known individuals in the state of Mississippi. Zach Scruggs shares a name with his father, and it is inconceivable that the coverage of Dick Scruggs's plea will not have spillover effects on Zach's right to a fair trial, especially only two weeks after his father's plea.

**D. The expanded voir dire procedures outlined in the previous Motion are even more important in light of the additional publicity**

As discussed before, Doc. 154, at 13-18, extensive pretrial publicity (and the use of an anonymous jury) warrant a more expansive voir dire procedure. The significant spike in publicity of this case, only two weeks before Zach Scruggs's trial is to begin, heightens the risk that venirepersons will have been exposed to news coverage, that they will have preconceptions

of Zach Scruggs's guilt, and that they will be willing to voice those opinions publicly.

Therefore, Zach Scruggs continues to believe that, in order to protect his constitutional right to an impartial jury and limit prejudice to the venire, the court should: 1) independently examine each juror exposed to pre-trial publicity; 2) conduct such examination *in camera* or at the bench, in order to avoid tainting the remaining venire; 3) allow Zach Scruggs to submit questions to the Court and follow up with individual voir dire; and 4) increase the number of peremptory challenges, as allowed by Federal Rule of Criminal Procedure 24.

### III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests that the Court grant his motion for re-consideration of the Court's order for an anonymous jury in this matter, or in the alternative issue a revised supplemental juror questionnaire, order a change of venue, and allow expanded voir dire procedures in this case.

Respectfully submitted, this the 19<sup>th</sup> day of March, 2008.

Dated: March 19, 2008

By: /s/ Todd Graves  
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*For Defendant*  
*David Zachary Scruggs*

**CERTIFICATE OF SERVICE**

I, Todd Graves, do hereby certify that on the 19<sup>th</sup> day of March, 2008, I have electronically filed the foregoing Defendant David Zachary Scruggs's Supplemental Motion for Reconsideration of Anonymous Jury Order or For Alternative Relief using the ECF System, which sent notification of such filing to Thomas W. Dawson, Assistant United States Attorney, Robert H. Norman, Assistant United States Attorney, David Anthony Sanders, Assistant United States Attorney, Frank W. Trapp, J. Rhea Tannehill, Jr., and John W. Kecker.

/s/ Todd P. Graves

Todd P. Graves