

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA)
)
vs.) No. 08 CR 846
) Honorable Joan H. Lefkow
JON BURGE)

DEFENDANT'S MOTION FOR NEW TRIAL

Defendant JON BURGE, by his attorneys, pursuant to Rule 33(a) of the Federal Rules of Criminal Procedure, respectfully moves this Honorable Court to order a new trial. In support thereof, the following is offered:

1. In making this motion we do not presently possess a complete trial transcript. This motion is thus based on counsel's notes and memories.
2. Burge has previously litigated a slew of pre-trial and mid-trial motions, lodged oral objections and responded to government motions and objections. It is not the intent of this motion to relitigate each of those motions, points or objections here. Nevertheless, Burge does not waive, abandon or forfeit his previously-asserted positions. Rather, he incorporates herein by reference his previously-filed papers and oral objections as support for his new trial request.
3. The point of this motion is to allege individual errors warranting a new trial, *and* to do what the appellants failed to do in *United States v. Warner*, 498 F.3d 666 (2007). That is, to advance a totality of the circumstances argument. *Cf. United States v. Santos*, 201 F.3d 953, 960 (7th Cir. 2000). Viewing this record as a whole, Burge is entitled to a new trial. See *United States v. Morales*, 902 F.2d 604, 605 (1990), amended

910 F.2d 467 (7th Cir. 1990) (new trial may be ordered when the interests of justice so require).

4. The attached memorandum of law is submitted as support for this motion.

WHEREFORE, based on the foregoing, Defendant JON BURGE respectfully moves this Honorable Court to order a new trial, hold a hearing on this motion and/or grant any other equitable and appropriate relief.

Respectfully submitted,

/s/ Marc W. Martin

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CERTIFICATE OF SERVICE

I, MARC W. MARTIN, an attorney for Defendant Jon Burge, hereby certify that on this, the 27th of August, 2010, I filed the Motion for New Trial on the CM/ECF system of the United States District Court for the Northern District of Illinois, which constitutes service of the same.

/s/ Marc W. Martin

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