

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

UNITED STATES OF AMERICA

v.

[REDACTED]

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MOTION TO PERMIT EXAMINATION OF EVIDENCE

The Defendant, by and through counsel, hereby moves this Honorable Court for an order permitting certain evidence, hereinafter described, introduced as evidence in the trial of this action, to be examined by a defense expert to determine whether newly discovered evidence exists which might warrant Defendant filing a Motion for a New Trial. In support of this Motion, the Defendant shows unto the Court the following:

1. The Defendant was charged in a one count indictment with possession with intent to distribute approximately six pounds of marijuana and one kilogram of cocaine hydrochloride.

2. The drugs were contained in a black bag carried by the Defendant as she exited a plane arriving from [REDACTED] on [REDACTED].

3. At trial the government's evidence showed that Defendant consented to a search of the black bag she was carrying. When [REDACTED] of the DEA started to search the bag, he observed that it was locked with a combination lock. He requested Defendant to open the bag and she allegedly twirl the numbers on the lock and did not open it. [REDACTED] testified that

he then asked Defendant if she minded him attempting to open the lock and requested the combination. Defendant allegedly gave him a combination of [REDACTED] which [REDACTED] used and was successful in opening the bag.

4. After [REDACTED] opened the black bag and pulled out a package containing marijuana, the Defendant allegedly stated that the bag was not hers and that she must have picked up the wrong bag.

5. Defendant testified that she attempted to open the bag's lock by using the combination to her bag which was [REDACTED] and was unsuccessful. She further testified that Agent [REDACTED] attempted to open the bag with the combination and was unsuccessful until she observed his body jerk and the lock opened.

6. Prior to the first trial in this action, defense counsel inspected the black bag and used the numbers [REDACTED] to open the lock.

7. Defense counsel is informed and believes that prior to the first trial in this action Special Assistant United States Attorney [REDACTED] also used [REDACTED] to open the lock.

8. During the first trial in this matter, [REDACTED] used [REDACTED] to open the lock during his testimony.

9. During the presentation of the evidence in the second trial in this matter, no witness attempted to open the lock using any combination.

10. Defense counsel, during closing argument, attempted to

open the lock using the [REDACTED] combination. Prior to lining up the numbers [REDACTED], the lock suddenly opened, much to counsel's surprise. At the time the lock opened the numbers inserted were not close to [REDACTED]