

COOPER & DORANCY, LLC

Attorneys and Counselors at Law

March 10, 2006

Mr. Steve Gartin
2908 - 10th Street N.W.
Albuquerque, New Mexico 87107

RE: 04CR2541 - Motion for New Trial

Dear Steve,

Please find enclosed a copy of the Motion for New Trial filed on your behalf. Hopefully, the judge will take a serious look at this and give it some consideration before ruling. Although, the listed errors may not be exhaustive, I think it gives the judge enough to consider without overwhelming her.

Procedurally, there is nothing else to file, after the Motion for New Trial. If she grants it, praise God. If not, the next course is to file the Notice of Appeal within forty-five (45) days *after* sentencing which is scheduled April 28, 2006 at 1:00 p.m.

Thank you for giving this your attention, and please contact me if you have any questions or concerns.

Sincerely,


Renée Cooper

Enclosure:

303 East 17th Street, Suite 200 · Denver, Colorado 80203

Telephone: (303) 831-1021 · Facsimile: (303) 831-1025

Jefferson County, Colorado <input type="checkbox"/> County Ct. <input checked="" type="checkbox"/> District Ct. Court address: 100 Jefferson County Pkwy, Golden, Colorado 80401 Phone Number: (303) 271-6180	<p style="text-align: center;">Client copy</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiff: People of the State of Colorado Defendant: STEVE DOUGLAS GARTIN	
Attorney for Defendant Gartin: Cooper & Associates, LLC Renée Cooper, # 20385 303 East 17 th Avenue, Suite 200 Denver, Colorado 80203 Telephone: (303) 831-1021 Facsimile: (303) 831-1025 E-mail: crimedefense@tyrocoopers.com	Case Number: 04CR2541 Division 8 Courtroom 4D
MOTION FOR NEW TRIAL	

COMES NOW, Defendant, Steve Gartin through his attorneys, Cooper and Associates, LLC, and pursuant to **C.R.Crim.P. 33(a)** and **(c)** respectfully moves this Court to vacate the verdict against Mr. Gartin and Order a New Trial,

AND IN SUPPORT THEREOF, DEFENDANT STATES AS FOLLOWS:

1. On February 23, 2006, after a trial to a jury, Defendant Gartin was found guilty of attempting to influence a public official.
2. Throughout the proceedings leading to trial, Defendant Gartin maintained his innocence and requested representation. Mr. Gartin did not receive a court-appointed attorney until after his Dispo/Preliminary Hearing date, approximately 6 weeks prior to trial.
3. Pursuant to **C.R.S. § 16-7-207 (1)(c)**, at the first appearance of the defendant in court, it is the duty of the judge to inform the defendant that he has a right to counsel and appoint counsel if he is indigent.
4. Mr. Gartin was denied counsel until approximately December 20, 2006 when the Public Defender's Office was briefly appointed; although he was arrested on this matter June 7, 2005.
5. Alternate Defense Counsel was appointed on January 3, 2006.

6. At trial, the prosecuting attorney made statements in his opening referring to Defendant's previous charges of Extortion and Filing of false documents, which the Court in granting Defendant's Motion in Limine, excluded from being disclosed. Said statements were in error and prejudiced the jury.
7. At trial, the prosecuting attorney in closing made statements about the only evidence from the Defense was that of the Defendant's testimony, which shouldn't be believed. Said comments are inappropriate and suggest that the Defendant who has a right not to present a defense, has some type of burden.
8. The prosecuting attorney's comments are tantamount to misconduct. Therefore, a new trial should be granted.
9. The question of whether a new trial should be granted for misconduct of counsel in his remarks to the jury rests in the sound judicial discretion of the trial court. *Lee v. People*, 170 Colo. 268, 460 P.2d 796 (1969).
10. Therefore, this Court has the authority to grant Defendant's Motion and Order a New Trial.
11. During trial there were several errors and defects: a) the Court erred by refusing to give Defendant's jury instruction as revised regarding "theory of defense"; b) there was insufficient evidence to support a finding of knowingly attempting to influence a public official and the Court erred by not granting Defendant's Motion for Judgment of Acquittal, after the close of the prosecution's case; c) the Court erred by not granting Defendant's Motion for Mistrial; d) the witness failed to obey the court's order regarding providing the defense with his file, the court allowed the witness to ignore the court's order, failed to force the witness to obey and forced defense to move on without the information and without holding the witness in contempt; e) the Defense was denied the opportunity to adequately prepare its defense without exculpatory evidence in the witness Miller's files regarding the appellate case; f) the Defense was denied the opportunity to adequately prepare for trial as the Court removed Defendant's appellate case for 97M811, 01CV1311 without informing the defense, the clerk Vanessa looked for the file and only found a very small file that did not contain the Notice of Appeal. Vanessa stated she would continue to look for the file, and mysteriously after trial, the "small" file had a notation that the file 01CV1311 was returned to the court room. Vanessa was not aware of why the file had been removed and previously, the notation was not on the file, as she would have known where the file was and would not have needed to continue to look for the file.
12. The Defendant was denied a fair trial and effective assistance of counsel when the prosecution failed to timely disclose that he was the prosecutor in a case wherein Miller was the defendant. The fact that Mr. Hall was the prosecutor in that case, should have been disclosed to the defense and all information disclosed, and an independent prosecutor appointed.

13. Defendant was denied a fair trial by the Court's refusal to force witness Miller to abide by the Subpoena and by failing to give the defense sufficient time to review all evidence and provide an adequate defense. Miller intentionally ignored the Court's order and the Court allowed Mr. Miller to be in and remain in contempt without regard to the right's of Defendant Gartin.
14. A defendant's right in a criminal proceeding to receive the reasonably effective assistance of an attorney acting as his diligent and conscientious advocate is guaranteed by the United States and Colorado Constitutions. *Davis v. People*, 871 P.2d 769, 772 (Colo. 1994). Since the right to counsel is essential to ensuring that the accused receives a fair trial, it is well established that the right to counsel includes the right to effective assistance of counsel. *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970); *People v. White*, 182 Colo. 417, 422 (1973); *People v. Norman*, 703 P.2d 1261, 1272 (Colo. 1985).
15. Ineffective assistance of counsel is tantamount to denying the accused a fair trial. A defendant's right to effective assistance of counsel is guaranteed by the United States and Colorado Constitutions. See, *Strickland v. Washington*, 466 U.S. 668, 691, (1984); *Davis v. People*, 871 P.2d 769 (Colo. 1994); and *Stern v. County Court*, 773 P.2d 1074 (Colo. 1989).
16. Defendant did not have an attorney appointed at the County Court Dispo/Preliminary Hearing stage, which is an integral part of the process and counsel should have been appointed. Thereafter, Mr. Gartin's matter was continued without assistance of counsel.
17. *C.R.Crim.P. 33*, provides in pertinent part:

The party claiming error in the trial of any case may move the trial court for a new trial or other relief. The party, however, need not raise all the issues it intends to raise on appeal in such motion to preserve them for appellate review. (c) The court **may grant a new trial if required in the interest of justice**. A Motion for a new trial other than on the ground of newly discovered evidence **shall** be filed withing fifteen days after the verdict. (Emphasis Added).
18. The prosecutor, Dennis Hall as well as Detective Clyman are Defendants in actions, which supports Mr. Gartin's theory of retaliatory prosecution and a special prosecutor should have been appointed. Therefore, the court erred in not appointing a special prosecutor in this matter.


19. The trial court erred when it failed to grant Mr. Gartin's Motion for Change of Venue due to the appearance of impropriety, and retaliatory prosecution based on Mr. Gartin's civil actions.
20. Attorney Miller who represented Mr. Gartin in 00CR3371 and who in complete disregard for the Court's order, did not bring Mr. Gartin's entire file, and thereby failed to provide exculpatory evidence which would have shown that Mr. Gartin **did not** see the Motion for Forgiveness and **did not** provide Exhibit B to Mr. Miller.
21. In Mr. Gartin's Motion for Vindictive Prosecution filed in case number 00CR3371, it is clearly set forth in paragraph 6, paragraph 19 and paragraph 20, that Mr. Gartin knew case 97M811 had been dismissed and 97M812 resulted in a jury conviction and subsequent appeal. (**Refer to Vindictive Prosecution 00CR3371**). Mr. Miller represented Mr. Gartin in that case and was well aware of the Motions filed in that case. Again, it was error for the court to allow Mr. Miller to remain in contempt of court by deliberately disobeying the properly served Subpoena Duces Tecum and Order of the court to bring his entire Gartin file.
22. It was not until the day of trial that defense counsel was aware that there were 8 volumes of 00CR3371, instead of the one volume she was provided when she went to inspect the file prior to trial.
23. Not having access to all of the files in this matter is tantamount to withholding discovery and is in violation of the Colorado Rules of Criminal Procedure and effectively denied Mr. Gartin a fair trial and the right to effective assistance of counsel.
24. Defense counsel was not provided with all the evidence and thereby was prevented from adequately preparing and presenting a defense.
25. The trial court erred when it did not enforce its ruling with respect to defense counsel's Motion to Require Prosecution to Specify 404 evidence, which the court granted and the Prosecution stated there was none, but proceeded to illicit 404 evidence from its witnesses.
26. The trial court erred in not allowing Judge Munsigner to discuss **C.R.C.P. Rule 11**, as a Motion to Seal is a "civil" matter which invoke the rules of civil procedure which Mr. Miller was bound when he signed and filed the Motion for Forgiveness and Petition to Seal.
27. The trial court erred in not granting Defendant's Motion for Judgment of Acquittal at the end of the Prosecution's case and again at the end of Mr. Gartin's case, as there was insufficient evidence to support a finding of guilt beyond a reasonable doubt.

28. The trial court erred when it failed to properly address and grant Mr. Gartin's Motion for Selective Prosecution, which cites current and relevant law. Thereby allowing Mr. Miller to escape prosecution for his illegal filing and to perjure himself and blame Mr. Gartin for "Exhibit B".
29. The trial court erred in not allowing the defense to completely and adequately cross-examine Mr. Miller regarding his Gartin file and record keeping habits.
30. The trial court erred by not allowing the matter to be scheduled in March or allowing Mr. Gartin to waive speedy so counsel could have sufficient time to adequately prepare for trial.
31. The purpose of a motion for new trial is to accord the trial judge a fair opportunity to consider and correct, any erroneous rulings and its own errors. *Losovio v. District Court*, 182 Colo. 186, 512 P.2d 264 (1973); *Haas v. People*, 155 Colo. 371, 394 P.2d (1964).
32. Defense respectfully, is requesting that the trial court review the trial and errors, and correct the errors by granting Mr. Gartin a new trial.
33. Several of the alleged errors were prejudicial to the substantial rights of Mr. Gartin and should be given serious consideration.
34. *C.R.Crim.P. 33 (c)* authorizes a trial court to grant a defendant's request for a new trial if required "in the interest of Justice". In the instant case, the evidence against Mr. Gartin was not overwhelming and included only Miller's testimony.
35. With Mr. Miller's flagrant disregard for the orders of this Honorable Court as well as the other errors alleged, the defense has shown that Mr. Gartin's Motion for a New Trial should be granted in the interest of justice.
36. Mr. Miller's attorney Mr. Massaro who was advised of the sequestration order, but created an appearance of impropriety by continuously leaving the courtroom and conversing with Mr. Miller who was standing veering through the window to the courtroom, yet was wheeled in by the prosecution due to an alleged foot injury; was improper and prejudiced Mr. Gartin.
37. Pursuant to the Rules, Mr. Gartin's Motion was timely filed, and this Honorable Court has the authority and responsibility to grant a New Trial in the interest of justice.
38. Defendant alleges that good cause has been shown and the ends of justice would be served by granting a new trial.

39. For the reasons stated herein and in the interest of justice and fair play, Defendant's Motion should be granted.

WHEREFORE, Mr. Gartin respectfully submits his Motion for New Trial and prays that this Honorable Court will review the errors and the contempt of court by Mr. Miller and the lack of evidence provided to the Defense and in the interest of justice and fair play, enter its Order granting Mr. Gartin's Motion for a New Trial and Order that this matter is rescheduled for trial.

Respectfully submitted this 10th of March 2006.



Renée V. Cooper, # 20385
Attorney for Defendant Gartin

CERTIFICATION OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing **Motion for New Trial** was served on this 10th day of March 2006, by placing the same in the United States mail, postage prepaid to ensure delivery and addressed as follows:

Dennis Hall, Esq.
Deputy District Attorney
District Attorney's Office
500 Jefferson County Parkway
Golden, Colorado 80401-6020