

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

**FILED**

MAY - 8 2006

WILLIAM J. BUTTRIE  
Clerk, U.S. District Court  
By \_\_\_\_\_  
Deputy Clerk

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. )  
)  
JIMMY C. CHISUM, )  
)  
Defendant. )

Case No. CR-05-43-~~WH~~ RAW

**RESPONSE TO MOTION FOR NEW TRIAL ON NEWLY DISCOVERED  
EVIDENCE**

COMES NOW the United States of America, by and through Sheldon J. Sperling, United States Attorney for the Eastern District of Oklahoma, and Jeffrey A. Gallant, Assistant United States Attorney, and responds to defendant's Motion for New Trial as follows:

**I. FACTUAL BACKGROUND**

On or about April 14, 2005, defendant was indicted in a four-count indictment by a federal grand jury sitting in the Eastern District of Oklahoma. Defendant was charged in each count with a violation of 26 U.S.C. §7201, Tax Evasion, regarding the income tax liability for Brian and Mitzi Chadsey for tax years 1997-2000, respectively. On November 30, 2005, after over two days of trial, defendant was convicted of all counts.

**II. DISCUSSION**

Defendant's motion is frivolous and largely incoherent. Motions based upon alleged newly discovered evidence should not be regarded with favor and should be only granted with great caution. *United States v. Muldrow*, 19 F.3d 1332, 1339 (10<sup>th</sup> Cir. 1994). Defendant admits in his motion that he received the claimed "new evidence" prior to trial. (Defendant's Motion,

pg. 1). Evidence known to defendant prior to trial is not “newly discovered”. *Id.* Furthermore, defendant’s motion was filed well more than seven days after the finding of guilt. Fed. R.Crim. Pro. 33. Accordingly, defendant’s motion must be denied.

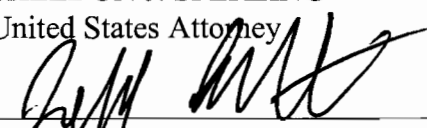
Notwithstanding defendant’s vague claims and assertions, the defendant’s claims are largely frivolous. Several of the claims asserted in the instant motion appear to have already been raised, in some fashion, by defendant previously and rejected by the Court. For example, defendant appears to claim that the United States does not have the ability to prosecute him, there was no tax due and owing, and that the court does not have “jurisdiction” over him. (Defendant’s Motion, pp. 7-8). It is abundantly clear from the record that this case was properly before the District Court and that defendant was properly convicted based on overwhelming evidence.

### III. CONCLUSION

Based on the foregoing, the government respectfully requests defendant’s motion be denied without hearing.

Respectfully submitted,

SHELDON J. SPERLING  
United States Attorney



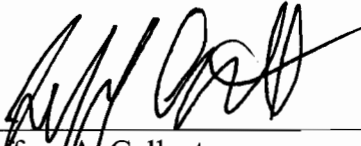
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**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing to be mailed on this 8th day of May, 2006, to the following:

Jimmy C. Chisum  
48412 N. Black Canyon Hwy #356  
New River, Arizona 85087

  
\_\_\_\_\_  
Jeffrey A. Gallant  
Assistant United States Attorney