

El Chapo jurors could be in legal trouble for criminal contempt as defense readies push for retrial

By Hollie McKay

Published March 01, 2019

Fox News

He was the world's most wanted man, and earlier this month, a 12-person jury convicted Mexican drug lord Joaquin "El Chapo" Guzman on every count of the ten charges against him.

But the jury – who were carefully and secretly selected amid much concern for their safety – might now face legal ramifications of their own as Guzman's defense appears set to file a motion mandating amid allegations of juror misconduct.

"There may be an evidentiary hearing to find out more, and then the jurors each have the right to their own attorneys. If they can't afford it, it falls back to the courts to provide a public defender," said a federal law enforcement official, who spoke of the condition of anonymity as they were not authorized to speak to the media. "Chapo's defense could also argue for a change of venue altogether, insisting that everything is tainted again."

The official also noted that Judge Brian Cogan should have sequestered the jury, essentially isolating them from the public for a period of time, to avoid external influences and exposure to media reports. But if proven, serious consequences may abound.

TWO SONS OF 'EL CHAPO' INDICTED ON DRUG CONSPIRACY CHARGES, REMAIN FUGITIVES

The post-trial hoopla started last week after one of the anonymous jurors told Vice News that at least half on the juror panel had flouted firm and frequent instructions from the Judge to completely avoid all media coverage of the trial, so as not to blemish their perceptions. The panel, under oath, told Cogan on at least two occasions that his instructions were being followed.

Nonetheless, the juror's interview with Vice alleges that panel members essentially lied – and that they did indeed read about the case on social media, turn to external sources and exposed themselves to reports and materials that were not presented during the trial – including accusations that Guzman drugged and raped underage girls.

While the United States Attorney's Office for the Eastern District of New York has thus far declined to comment on the matter, Guzman's defense team are speaking out with full force.

"Defense will file a Motion for a New Trial within the time frame allowed by the Court. This trial received unprecedented publicity. It appears that the jurors had access to and discussed hugely prejudicial information that was excluded from the trial," attorney William Purpura told Fox News. "If factually accurate this strikes at the very foundation of the concept of a 'fair trial.'"



Joaquin Guzman's defense attorney Jeffrey Lichtman speaks to reporters as he leaves Brooklyn Federal court after opening arguments in the trial of the Mexican drug lord known as "El Chapo," Tuesday, Nov. 13, 2018, in New York. (AP Photo/Mary Altaffer) (Mary Altaffer / AP)

Second attorney Eduardo Balarezo concurred the possible juror misconduct is "deeply concerning and distressing," and if true, makes it clear that Guzman "did not get a fair trial."

And third lawyer Jeffrey Lichtman told Fox News that they are "honestly stunned at the significant misconduct of the jury which not only ignored all of the judge's admonitions against seeking out press reports of the case, but also lied to the judge's face when asked about it."

"And this was only part of the jury's misconduct in this case. We will be filing a motion for a new trial and expect the jury to be questioned, individually at a time, about what they did and what materials they relied upon during deliberations," he asserted. "Joaquin Guzman deserved a fair trial and it cannot be said with a straight face that he received one. We will continue fighting until the time that he gets one."

Since the guilty verdict on February 13, a fourth attorney – Marc Fernich who is widely deemed an expert in appeals – has also been added to the fray. Lichtman and Fernich worked together in 2005 to successfully get John "Junior" Gotti acquitted on a \$25 million securities fraud charge.

"Recent reports indicate that jurors may have been exposed to inadmissible and highly inflammatory external information. They suggest that jurors may have violated the judge's instructions, prematurely deliberated and lied to him when asked about it," Fernich told Fox News. "If true, they suggest that jurors may have violated their oath, thwarting Mr. Guzman's right to a fair trial before an impartial and unbiased jury. We'll address these issues more fully in a forthcoming motion to be filed next month."

CRUELTY OF EL CHAPO'S SINALOA CARTEL KNOWS NO BOUNDS: BEHEADINGS BY CHAINSAW, BODY PARTS STREWN IN THE STREETS

The Judge has granted the Defense until March 28 to file their motion. Depending on the outcome of the motion, either a "new trial" will be set or he will be sentenced as originally planned on June 25.

"The juror misconduct may fall under contempt of court, particularly if they lied to the judge when questioned about specific instances of whether they had seen news reports," conjectured New York John Pappalardo, Criminal Defense Attorney and Conflict Trial Counsel for The New York Police Department. "This could be either civil or criminal contempt, likely dependent on the nature of the misconduct and whether it was deliberate and done with intent. Civil contempt would likely be some sort of fine, while criminal contempt could involve punishment such as jail or probation."



This Feb. 22, 2014 file photo shows Joaquin "El Chapo" Guzman, the head of Mexico's Sinaloa Cartel, being escorted to a helicopter in Mexico City following his capture in the beach resort town of Mazatlan. (AP)

Kendall Coffey, a former U.S. attorney for the Southern District of Florida with years of prosecuting drug kingpins also stressed that jurors who violate a court's order – and especially if they lied to the judge about it – could be subjected to criminal contempt proceedings as well as perjury charges.

“There could even be jail time,” she said. “Indeed, even if the court concludes that Chapo does not get a new trial because the evidence against him is mountainous, the court may still want to address the alleged wrongdoing of jurors to protect the integrity of the court system and to send a message to future jurors.”

Furthermore, if a mistrial is declared, it would amount to a complete do-over, starting the trial – which went on for three months – from the very beginning with a new pool and exorbitant costs.

Coffey noted that the biggest challenge for the defense in acquiring a new trial may be the notion that the “evidence against Chapo was overwhelming and a judge might well conclude that the misconduct was not likely to have affected the outcome,” if it does proceed it will cost the American taxpayer millions more.

“If there is a ‘colorable showing’ that the jury was tainted by extraneous prejudicial information, the judge can fashion an inquiry which could include questioning of jurors – typically by the judge – to see if there was any such taint,” she continued. “Here, it is being alleged not only that jurors disobeyed the court’s instructions to avoid media stories but some jurors lied to the judge in denying there was such extraneous information. These allegations are very troubling – even the worst of the worst get a fair trial in our system.”

Criminal defense attorney Troy Slaten underscored that the new allegations of juror misconduct are not enough to warrant a mistrial – yet.

“Judges want there to be confidence in the jury system, especially when we are talking about a case where someone will likely be incarcerated for life,” he said. “If these allegations infect the process so much that a reasonable person would no longer have confidence in the process, it would have to be re-done.”

PUSH TO LABEL DRUG CARTELS AS FOREIGN TERRORIST ORGANIZATIONS PICKS UP STEAM

However, many legal experts stressed that the quest to be granted a new trial is hardly a slam dunk, and almost always fraught with challenges.

“Showing the court that the jurors’ actions were equal to misconduct isn’t enough,” explained California-based attorney Arash Hashemi. “What this basically means is that El Chapo’s lawyers have to demonstrate that the so-called outside evidence is what made the jurors reach their verdict and without the outside evidence they would not have reached such a verdict.”



A statue of Mexican drug lord Joaquin "El Chapo" Guzman, is displayed for sale near a bust of narco-saint Jesus Malverde, at his chapel in Culiacan, Sinaloa state in northwest Mexico, on February, 19, 2019 (AFP/Getty)

Jan Ronis, a critical defense attorney in San Diego, California – who specializes in Mexican Cartel cases – too pointed out that, statistically speaking, such motions for a brand new trial are rarely granted.

If that’s the case, it is expected that Guzman, 61, will likely be sent to the Supermax federal prison in Florence, Colorado for the rest of his life.

“He has no reaction to any of it,” one law enforcement official who has frequent contact with Guzman said. “There’s no emotion, no upset, no rage. Chapo stays quiet – mostly just stares out at nothing.”

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And for some law enforcement figures who have dedicated their lives to fighting drug crimes and nailing chiefdoms like Guzman, the juror fracas is viewed with frustration.

“The lawyers will just put on a show as they increase their bank accounts with a massive amount of dirty money,” added Derek Maltz, former Special Agent in Charge of the Drug Enforcement Administration Special Operations Division in New York. “The jurors should be commended since they clearly reviewed all the evidence and took their job very seriously. They put their personal lives on hold for months to serve the American justice system. We should not waste another day to sentence this monster. To drag out the inevitable and waste the taxpayers’ money so defense attorneys can increase their wealth is a waste.”

Hollie McKay has been a Fox News Digital staff reporter since 2007. She has extensively reported from war zones including Iraq, Syria, Yemen, Afghanistan, Pakistan, Burma, and Latin America investigates global conflicts, war crimes and terrorism around the world. Follow her on Twitter.

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