

Are prosecutors blowing the case against John Wiley Price?

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If you think the government's public corruption case against Dallas County Commissioner John Wiley Price is a slam-dunk, think again.

The whole case seems to be veering off track right before our eyes.

Allegations of the government withholding evidence — for the second day in a row — took center stage Tuesday while a defense attorney for co-defendant Dapheny Fain called for a mistrial and the presiding judge announced that someone in the courtroom had photographed two jurors.

Some of the underlying concerns surfaced with jurors in the courtroom, but most of the tactical drama unfolded after the jury was sent home for the day around noon.

Thank goodness I ignored my growling stomach and sat tight after the jury was excused.

That's when things got *really* interesting for the next 40 minutes.

U.S. District Judge Barbara Lynn, a no-nonsense jurist who has prodded both sides to keep the trial moving along, took prosecutors to task for failing to turn over potentially crucial documents to the defense.

And she ordered them to turn it over pronto, by 3:30 p.m. Tuesday, with the trial set to resume at 9 a.m. Wednesday.

"This problem is of the government's own making," Lynn admonished prosecutors.

Later, a clearly frustrated Lynn pointedly told prosecutors: "It baffles me how the government thinks I can provide some legal review when only you know what you did not provide me."

This is huge because the government's failure to turn over evidence not only is fueling speculation of a mistrial but also could be used as a solid basis for an appeal should the prosecution win convictions.

The defense already has asked the judge to strike the testimony of two of the government's key witnesses — the FBI's forensic accountant, David Garcia, and the former FBI agent, Don Sherman, who led the investigation of Price until he suffered a life-threatening stroke that forced him to retire. The judge later denied that request but agreed to allow the defense to recall those two witnesses. She also rejected a motion for a mistrial.

The defense also is questioning the integrity of the immunity deal that prosecutors struck with Price's political consultant, Kathy Nealy, before she testified in the 2009 public corruption case against former Dallas Mayor Pro Tem Don Hill.

Nealy will be tried in a separate trial.

Nealy's attorney, Cheryl Wattley, reiterated Tuesday that her client will invoke her Fifth Amendment protection against self-incrimination and will not testify.

One telling moment in the trial came when one of Fain's attorneys, Marlo Cadeddu, cross-examined FBI Special Agent Allen Wilson, who'd testified that Fain had lied about money being transferred from Price's bank account to MMS Co., which was Fain's business.

Cadeddu, however, walked Wilson through all 10 pages of his handwritten

notes, asking him each time, "It does not say Price has not transferred any of his money into an MMS account, does it?"

"No," Wilson replied.

"Nor does it use the word transfer?" Cadeddu said.

"No," Wilson said.

So the question left hanging was how Wilson, who said he took the notes while Sherman asked most of the questions, could accuse Fain of lying when his notes don't reflect that anywhere.

To make matters worse for the prosecution, one of the documents that prosecutors haven't turned over to Fain's attorney is a draft version of the notes Wilson took when he and Sherman questioned Fain about Price's involvement in her business.

Throw in the fact that Price's attorney, Shirley Baccus-Lobel, has argued that the government has painted an incomplete picture of what she calls "loans" and "repayments" that went back and forth between Price and his alleged conspirators, and you can see why the defense is going after prosecutors for failing to turn over all its evidence.

This could be a game-changing setback for prosecutors, who typically don't make egregious errors in high-profile public corruption cases, which is why they win more than 93 percent of the time.

But right now, at what Lynn aptly called "an inopportune" time in the trial, prosecutors played right into the hands of the defense.

Whether they can recover, at this point, is anybody's guess.