

(Cite as: 952 So.2d 129)

U.S. v. Sylvester C.A.5 (Miss.), 1998.

United States Court of Appeals, Fifth Circuit.  
UNITED STATES of America, Plaintiff-Appellee,

v.

Mark SYLVESTER, Leon Brown, and Willie Earl Culley, Defendants-Appellants.

**No. 96-60796.**

June 11, 1998.

Defendants were convicted in the United States District Court for the Southern District of Mississippi, [Henry T. Wingate](#), J., of assorted drug-related crimes, and they appealed. The Court of Appeals, [Jerry E. Smith](#), Circuit Judge, held that: (1) judge's response to jury's note was not *Allen* charge which would have had to make plain to jury that each member had duty conscientiously to adhere to his own honest opinion; (2) court erred in failing to notify counsel before issuing instruction, but error was harmless; (3) trial court did not abuse its discretion in denying mistrial in response to witness' alleged comment on defendants' election not to testify; (4) evidence was sufficient to support challenged convictions; (5) evidence was sufficient to support findings in applying sentencing guidelines to defendant; but (6) ex parte inquiry into possible jury tampering was insufficient.

Remanded.