

foregoing, Defendant Crosby points to the following failures of the government's evidence.

I. Section 666 "coverage"

The Government did not meet its burden of proof on all the "coverage" elements of the statute, including agent status, receipt of federal funds, "business" as not including the drafting and voting on legislation, and involvement of a thing of value greater than \$5,000.00. While the Court denied Crosby's motion to dismiss raising these grounds, these arguments are raised again.

New case law shows that legislators do not act "on behalf of" the state (18 U.S.C. § 666(d)(1), definition of "agent"). Nevada Comm'n on Ethics v. Carrigan, 131 S.Ct. 2543, ___ U.S. ___, ___ L.Ed.2d ___(2011)(hereinafter "Carrigan"), indicates that legislators hold authority on behalf of their constituents, or of the people, rather than "on behalf of" the State as an entity.² When a legislator votes on, or drafts, legislation, he or she is not acting "on behalf of" the State. The individual's vote, or the drafting, does not constitute an act that binds the State in an agency sense. Only (at most) the aggregate act of the legislature as an entity enacting a law

² Representative Barry Mask testified that he wrote, introduced, and voted on legislation for his "constituents." (*Doc. 1434, Vol. 7 of trial transcript, June 21, 2011 testimony of Barry Mask, p. 239, lines 15-19*).

might be said to be "on behalf of" the State (and even that would be a linguistic stretch as well as a legal stretch, particularly as to an act that puts a proposed constitutional amendment to a vote of the people), not the individual acts of legislators.³

The evidence showed that Crosby was not an "agent" in that he did not act "on behalf of" the State either; he worked for members of the Legislature (who, as noted above, are not "agents"). (*Doc. 1298, Vol. 4 of trial transcript, June 15, 2011 testimony of Scott Beason, p. 92, lines 4-11; p. 93, lines 4-7; Doc. 1551, Vol. 6 of trial transcript, June 20, 2011 testimony of Barry Mask, p. 202, lines 15-16; Doc. 1434, Vol. 7 of trial transcript, June 21, 2011 testimony of Barry Mask, p. 239, lines 15-19, p. 250, lines 18-25, p. 251, lines 1-24; Doc. 1647, Vol. 9 of trial transcript, June 23, 2011⁴ testimony of James Sumner, p. 198, lines 17-22*). Also, there was a lack of evidence that Crosby was "authorized to act on behalf of" the

³ As stated in Carrigan, 131 S.Ct. 2343, 2350, a "legislator's vote is the commitment of his apportioned share of the legislature's power to the passage or defeat of a particular proposal. The legislative power thus committed is not personal to the legislator but belongs to the people." (emphasis supplied). The "legislator casts his vote 'as trustee for his constituents ...,'," 131 S.Ct. at 2350, not as an agent of the State as an entity. "A legislator voting on a bill ... is performing a governmental act as a representative of his constituents," (emphasis supplied). 113 S.Ct. at 2351, n. 5

⁴ The cover of this volume incorrectly listed the date as March 23, 2011.

State (see 18 U.S.C. § 666, definition of "agent"), in any meaningful agency sense; he could not bind the State with anything that he did that is pertinent to this case, as he only drafted bills and did not commit the State to them in any sense whatsoever. (*Doc. 1298, Vol. 4 of trial transcript, June 15, 2011 testimony of Scott Beason, p. 92, lines 4-11, p. 93, lines 4-7; Doc. 1551, Vol. 6 of trial transcript, June 20, 2011 testimony of Barry Mask, p. 202, lines 15-16; Doc. 1434, Vol. 7 of trial transcript, June 21, 2011 testimony of Barry Mask, p. 239, lines 15-19, p. 250, lines 18-25, p. 251, lines 1-24; Doc. 1647, Vol. 9 of trial transcript, June 23, 2011⁵ testimony of James Sumner, p. 198, lines 17-22*).

The evidence was that the legislature did not receive federal funds. (*Doc. 1647, Vol. 9 of trial transcript, June 23, 2011⁶ testimony of Gail Traylor, p. 144, lines 2-13*). Nor did the Alabama Legislative Reference Service ("LRS"). (*Doc. 1647, Vol. 9 of trial transcript, June 23, 2011⁷ testimony of Gail Traylor, p. 144, lines 21-23*). Therefore, as to Crosby, there was a lack of evidence that he was an "agent" in the required

⁵ The cover of this volume incorrectly listed the date as March 23, 2011.

⁶ The cover of this volume incorrectly listed the date as March 23, 2011.

⁷ The cover of this volume incorrectly listed the date as March 23, 2011.

sense of having responsibility for the expenditure of funds, see United States v. Whitfield, 590 F.3d 325, 344 (5th Cir. 2009) (“In United States v. Phillips, we held that for an individual to be an ‘agent’ for the purposes of section 666, he must be ‘authorized to act on behalf of [the agency] with respect to its funds.’ 219 F.3d 404, 411 (5th Cir. 2000).”) And, as to both Crosby and legislators, there can be no conviction under 18 U.S.C. § 666 where the person allegedly “bribed” worked in a branch of government that received no federal funds. There is no case law clearly establishing that the Government can spread the reach of 18 U.S.C. § 666 merely by charging everyone as an agent of the undifferentiated State of Alabama as a whole, where the person worked in a constitutionally separate branch of state government that received no federal funds. Such an application would go beyond the proper reach of the statute and would go beyond proper boundaries of federal Spending-Clause power.

When these points are combined with the fact that Congress chose not to specifically say that legislators are covered by 18 U.S.C. § 666 – as contrasted with the Congressional decision to specifically cover Members of Congress in 18 U.S.C. § 201 – the best logical conclusion is that 18 U.S.C. § 666 does not cover alleged influence of state legislators especially when the State Legislature receives no federal funds.

II. Section 666 - no "bribery"

[18 U.S.C. §] 666 proscribes theft and bribery in connection with programs of [state] governments receiving federal funds. [18 U.S.C. §] 666(a)(1)(B) criminalizes a [state] government employee's "corruptly" soliciting or accepting a bribe:

(a) Whoever ...

(1) being an agent of [a] local ... government, or any agency thereof-
....

(B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such ... government, or agency involving anything of value of \$5,000 or more; or shall be fined ...,

imprisoned not more than 10 years, or both.

United States v. McNair, 605 F.3d 1152, 1186 (11th Cir. 2010).

It is axiomatic that, as a matter of due process, the government is required to prove beyond a reasonable doubt every element of a charged crime. In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). This applies to the requirement of proof of a quid pro quo as alleged in the indictment in this case. It was for the government to prove beyond a reasonable doubt that there was a quid pro quo as alleged in the indictment. It was not up to Crosby to prove to any degree that there was not.

In this case, there was insufficient evidence that Crosby violated or agreed to violate 18 U.S.C. § 666 through a corrupt quid pro quo agreement as alleged in the indictment. There was no evidence of a corrupt agreement that Crosby would draft gambling legislation favorable to Milton McGregor in exchange for payments, or that the payments were in exchange for his drafting at all. The requirement of proof of these sorts of corrupt agreements is supported by United States v. Siegelman, 640 F.3d 1159 (11th Cir. 2011) (hereinafter "Siegelman II")(continuing to reflect that an "agreement" that is the essence of the offense and emphasizing that "quid pro quo" includes not only the quid and the quo but also the "pro - the corrupt agreement to make a specific exchange."). Siegleman II, further holds that the quid pro quo agreement must be for a "specific" official action, in order to constitute a crime. See Siegelman II ("The official must agree to take or forego some specific action in order for the doing of it to be criminal under § 666. In the absence of such an agreement on a specific action, even a close-in-time relationship between the donation and the act will not suffice.") The requirement of proof of an intent to alter conduct is supported by the August 25, 2011 opinion of the United States Court of Appeals for the Third Circuit in United States v. Bryant, ___ F.3d. ___, 2011 WL 375811 (3d Cir. 2011) (hereinafter "Bryant") In Bryant, the

appellants argued on appeal that "honest services fraud instructions were deficient because they did not require the jury to find an intent to 'alter' an official action."

The Third Circuit rejected that argument stating:

Appellants are correct that "bribery requires a quid pro quo, which includes an intent to influence an official act or to be influenced by an official act." [United States v. Kemp, 500 F.3d [257,] 281 [(3d Cir. 2007)] (construing federal bribery and gratuity statute, 18 U.S.C. § 201, which is "equally applicable to bribery in the honest services fraud context") (citations and internal quotation marks omitted). It is also true that "bribery requires a specific intent to give or receive something of value in exchange for an official act." *Id.* (emphasis omitted). But they are incorrect that the instruction failed to state clearly those legal requirements.

Yet Appellants ignore a key passage of the Court's instructions, which stated:

[N]ot every payment made to a public official constitutes a bribe. A payment made in a general attempt to build goodwill or curry favor with a public official, without more, does not constitute a bribe.... What distinguishes a bribe from other payments that would not constitute violations is that a bribe is offered or accepted with the intent to influence, or to be influenced, in an official act.

(emphasis added). This instruction made clear that an intent to influence was required for a finding of guilt.

From this, it follows that there is a requirement of an intent to alter conduct. As to Crosby, the Government had to prove a quid, a pro, and a quo. [United States v. Kummer, 89 F.3d 1532, 1540 (11th Cir. 1996) ("The 'with intent to be influenced'

language prohibits a bribe, which involves a quid pro quo"; "a bribe involves a specific understanding that it will affect an official action -- a quid pro quo."). It did not.

The alleged quo in this case was that Crosby supposedly altered his conduct by drafting gambling legislation favorable to McGregor. Paying Crosby for reasons other than that is not what was charged. The trial evidence did not show a quid pro quo agreement to affect Crosby's actions with regard to drafting gambling legislation favorable to McGregor. The evidence did not show why Crosby was paid. More to the point, the evidence plainly did not show that there was any agreement of any sort that Crosby's drafting-related actions, in particular, drafting gambling legislation favorable to McGregor, would be affected in exchange for payment. It further did not show a corrupt intent. See 18 U.S.C. § 666(a)(2)(requiring proof that offer or payment was made "corruptly.")

The Government has claimed that Crosby engaged in some sort of wrongdoing in drafting a bill for Senator Scott Beason in early 2010 and has suggested that Crosby did his job "wrong" in a way to help McGregor. But, the Government's proof utterly failed. There was a mistake by either Senator Beason or LRS intake, regarding what bill Senator Beason wanted LRS to model a new bill after. There was no evidence that Crosby was at fault. (*Doc. 1298, Vol. 4 of trial transcript, June 15, 2011 testimony*)

of Scott Beason, p. 5, lines 18-23, p. 32, lines 4-8, p. 44, lines 18-20, p. 46, lines 9-15, p. 47, lines 1-25, p. 48, lines 1-25, p. 49, lines 1-25, p. 50, lines 1-3, p. 62, lines 6-25, p. 70, lines 7-11) The LRS intake sheet contained a notation "pullover attached." (*Doc. 1298, Vol. 4 of trial transcript, June 15, 2011 testimony of Scott Beason, p. 43, lines 8-10, Exhibit 2308*). Attached was a copy of a 2006 bill prohibiting electronic bingo. (*Doc. 1298, Vol. 4 of trial transcript, June 15, 2011 testimony of Scott Beason, p. 43, lines 8-10, Exhibit 2308*) The attachment was the same as bills with which Senator Beason had been associated previously.⁸ (*Doc. 1298, Vol. 4 of trial transcript, June 15, 2011 testimony of Scott Beason, p. 47, lines 11-23, p. 48, lines 20-25, p. 49, lines 1-25, p. 50, lines 1-9*) Beason did not talk with Crosby in connection with the submission of his request. (*Doc. 1298, Vol. 4 of trial transcript, June 15, 2011 testimony of Scott Beason, p. 32, lines 4-8, p. 44, lines 18-20, p. 62, lines 15-18*) Crosby necessarily had to rely on what was put on the intake sheet and the government has no basis upon which to say that Crosby was trying to do anything other than to follow his understanding of

⁸ The previous bills, if passed, would have eliminated all electronic gaming and had a dramatic adverse impact on Victoryland. (*Doc. 1298, Vol. 4 of trial transcript, June 15, 2011 testimony of Scott Beason, p. 19, lines 16-25, p. 20, line 1, p. 24, lines 6-15, p. 25, lines 16-22, p. 26, lines 14-25, p. 27, lines 1-13, p. Exhibit 2301; Exhibit 2302*)

what Senator Beason wanted. (*Doc. 1298, Vol. 4 of trial transcript, June 15, 2011 testimony of Scott Beason, p. 32, lines 4-8*) The bill that Crosby produced, patterned after the attached 2006 bill (*Doc. 1298, Vol. 4 of trial transcript, June 15, 2011 testimony of Scott Beason, p. 47, lines 11-20, p. 49, lines 14-25, p. 50, lines 1-9*), would have been devastating to McGregor and Victoryland. It would have shut down Victoryland in an expedited manner just as Senator Beason claimed he wanted. (*Doc. 1298, Vol. 4 of trial transcript, June 15, 2011 testimony of Scott Beason, p. 50, lines 4-13, p. 51-21-25, p. 56, lines 7-15*) After Senator Beason realized the mistake and let Crosby know about it, Crosby promptly prepared another bill at Senator Beason's request that would have again been devastating (even more so) to McGregor and Victoryland.⁹ (*Doc. 1298, Vol. 4 of trial transcript, June 15, 2011 testimony of Scott Beason, p. 68, line 25, p. 69, lines 105*). Crosby did this the next business day after it was requested. (*Doc. 1298, Vol. 4 of trial transcript, June 15, 2011 testimony of Scott Beason, p.*

⁹ Q. January 14, 2010, Beason requests that LRS change that January 11 bill to one that makes illegal all gambling. Ray Crosby prepares it the way Mr. - Senator Beason wants it, wipes out Victoryland and all gambling. Correct?

A. Correct.

(*Doc. 1298, Vol. 4 of trial transcript, June 15, 2011 testimony of Scott Beason, p. 68, line 25, p. 69, lines 105*)

62, lines 6-10). In both instances, Crosby did what was requested. (*Doc. 1298, Vol. 4 of trial transcript, June 15, 2011 testimony of Scott Beason, p. 32, lines 4-8; p. 50, lines 4-13, p. 51-21-25, p. 56, lines 7-15*).

But, these were not the only times Crosby drafted bills which would have adversely affected McGregor's financial interests. In the fall of 2009, Crosby drafted a bill for Senator Beason which would have prohibited all gambling in Alabama with a resulting adverse impact on McGregor's financial interests. (*Doc. 1248, Vol. 4 of trial transcript, June 15, 2011 testimony of Scott Beason, p. 27, lines, 20-25, p. 28, lines 14-25, p. 29, line 1-3, p. 30, lines 21-25, p. 31, lines 1-8, 16-25, p. 32, lines 1-3, p. 33, lines 13-20, Exhibit 2321*). Additionally, Crosby constructed drafts which would have limited class 3 gaming to the Poarch Creek gaming facilities, (*Doc. 1553, Vol. 25 of trial transcript, July 18, 2011 testimony of Jarrod Massey, p. 105, lines 8-12, p. 114, lines 19-25, p. 115, lines 1-25, p. 116, lines 1-13, Exhibit 4106*), which would have paved the way for gaming in Russell County with the result of picking off customers from McGregor's Victoryland facility in Macon County, (*Doc. 1553, Vol. 25 of trial transcript, July 18, 2011 testimony of Jarrod Massey, p. 103, lines 23-25, p., 104, lines 1-25, p. 105, lines 1-7, 13-25, p. 106, lines 1-25, p. 107, lines 5-25, p. 108, lines 1-20, p. 109, lines 3-25, p. 110,*

lines 1-25, p. 111, lines 1-25, p. 112, lines 1-110, Exhibits 4111, 4112, 4113, 4114, 4115, 4116, 4117, 4118, 4119, and 4120), and limiting electronic bingo to vessels in international waters. (Doc. 1553, Vol. 25 of trial transcript, July 18, 2011 testimony of Jarrod Massey, p. 116, lines 14-25, p. 117, lines 1-25, p. 118, lines 1-2, Exhibit 4123).

Moreover, the final version of Senate Bill 380 made no guarantees for McGregor's financial interests as the government might like to suggest. (*Doc. 1478, Vol. 8 of trial transcript, June 22, 2011 testimony of Benjamin Lewis, p. 83, lines 19-22, Exhibit 1138, pages US-00029258 through US-00029266*) First, of course, there was no guarantee that the voters of Alabama would vote to pass the constitutional amendment. Second, there were no guarantees on any particular individual or company getting a location or license and there were no guarantees of anything in the way of taxes other than a floor. (*Doc. 1478, Vol. 8 of trial transcript, June 22, 2011 testimony of Benjamin Lewis, p. 83, lines 19-22, Exhibit 1138, page US-00029261*).

The Government introduced evidence of discussions with Crosby about drafting SB380. (*Doc. 1573, Vol. 14 of trial transcript, June 30, 2011 testimony of John McEarhern, p. 6, lines 23-25, p. 7, lines 1-25, p. 8, lines 1-25, p. 9, lines 1-6 Exhibit J116; p. 11, lines 20-25, p. 12, lines 1-24, Exhibit J119; p. 16, lines 5-25, p. 17, lines 1-20, Exhibit J122; p. 18,*

lines 4-25, p. 19, lines 1-25, p. 20, lines 1-25, p. 21, lines 1-10, Exhibit J127; p. 21, lines 11-25, p. 22, lines 1-19 Exhibit J128,; p. 35, lines 7-25, p. 36, lines 1-6, Exhibit J131). However, there was no evidence that the nature of the discussion was unusual, in terms of a person authorized by the sponsor of the bill to work with LRS, such that it would have proved the existence of a corrupt quid pro quo agreement as alleged in the indictment. (Doc. 1573, Vol. 14 of trial transcript, June 30, 2011 testimony of John McEarhern, p. 6, lines 23-25, p. 7, lines 1-25, p. 8, lines 1-25, p. 9, lines 1-6 Exhibit J116; p. 11, lines 20-25, p. 12, lines 1-24, Exhibit J119; p. 16, lines 5-25, p. 17, lines 1-20, Exhibit J122; p. 18, lines 4-25, p. 19, lines 1-25, p. 20, lines 1-25, p. 21, lines 1-10, Exhibit J127; p. 21, lines 11-25, p. 22, lines 1-19 Exhibit J128,; p. 35, lines 7-25, p. 36, lines 1-6, Exhibit J131). There is nothing wrong with a legislator authorizing a private person to work with the LRS on a bill. (Doc. 1298, Vol. 4 of trial transcript, June 15, 2011 testimony of Scott Beason, p. 21, lines 17-25, p. 22, lines 1-19, p. 90, lines 8-22) Indeed, Senator Beason said that he, himself, had authorized private individuals to deal with LRS in the drafting process. (Doc. 1298, Vol. 4 of trial transcript, June 15, 2011 testimony of Scott Beason, p. 90, lines 8-10). In the process of drafting, it is not unusual for a bill's legislative sponsor to

orally authorize other people to deal with LRS regarding the drafting of a bill. (*Doc. 1298, Vol. 4 of trial transcript, June 15, 2011 Scott Beason testimony, p. 22, lines 17-19, 20-22*). Moreover, private individuals authorized to work with the LRS can suggest language, even up to suggesting the entire text of a bill. (*Doc. 1298, Vol. 4 of trial transcript, June 15, 2011 testimony of Scott Beason, p. 90, lines 20-25, p. 91, lines 1-11*). And, former representative and now state District Judge Ben Lewis indicated that it is common for interest groups to drafts bills for introduction. (*Doc. 1647, Vol. 9, trial transcript, June 23, 2011 testimony of Benjamin Little, p. 79, lines 6-25, p. 80, lines 1-11*). In the end, though, it is the sponsor who decides what it will be included in a bill and what will be introduced.¹⁰ (*Doc. 1298, Vol. 4 of trial transcript, June 15, 2011 testimony of Scott Beason, p. 91, lines 12-14*)

As confirmed in Agent McEachern's testimony, the referenced contacts in this case were authorized by Senator Bedford.¹¹

¹⁰ In this case, Senator Beason said that he had never heard of anyone in LRS dictating to Senator Roger Bedford, the sponsor of SB 380, what he would have in a bill. (*Doc. 1298, Vol. 4, trial transcript, June 15, 2011 testimony of Scott Beason, p. 94, lines 3-6*)

¹¹ Q. Now would you conclude from this, that from Senator Bedford's own words on this recording, that it was okay with him that Milton McGregor and David Johnston were participating with Ray Crosby and Legislative Reference Service on drafting this bill, correct?

(Doc. 1737, Vol. 16 of trial transcript, July 5, 2011 testimony of John McEarhern, p. 86, lines 18-25, p. 87, lines 1-25, p. 88, lines 1-25, p. 89 lines 1-25, p. 90, lines 1-25, p. 91 lines 1-3, Exhibit J118). The fact that the discussions took place, therefore, was no evidence of a corrupt agreement. And, there was nothing corrupt in the conversations themselves. (Doc. 1573, Vol. 14 of trial transcript, June 30, 2011 testimony of John McEarhern, p. 6, lines 23-25, p. 7, lines 1-25, p. 8, lines 1-25, p. 9, lines 1-6 Exhibit J116; p. 11, lines 20-25, p. 12, lines 1-24, Exhibit J119; p. 16, lines 5-25, p. 17, lines 1-20, Exhibit J122; p. 18, lines 4-25, p. 19, lines 1-25, p. 20, lines 1-25, p. 21, lines 1-10, Exhibit J127; p. 21, lines 11-25, p. 22, lines 1-19 Exhibit J128,; p. 35, lines 7-25, p. 36, lines 1-6, Exhibit J131). There were changes to the original bill. But, there is nothing wrong with amendments and changes to the language to be included in bills. According to Representative Barry Mask, those things are constants. (Doc. 1551, Vol. 6 of

A. That's correct.

Q. And if it's okay with him, it must be approved and authorized, correct?

A. Approved and authorized by --

Q. By Senator Bedford.

A. Yes.

(Doc. 1737, Vol. 16 of trial transcript, July 5, 2011 testimony of John McEarhern, p. 90, lines 18-15, p. 91, lines 1-3)

trial transcript, June 20, 2011 testimony of Barry Mask, p. 157, line 25, p. 158, lines 1-4). And, there was no evidence that Crosby "snuck" anything into the final draft of SB380 to benefit McGregor.

The Government tried to suggest, through Ronnie Gilley's testimony and Jarrod Massey's testimony, that there was something to be inferred from the fact that Massey felt like he did not have the same access to drafts of SB 380 as Tom Coker and Robert Geddie. (*Doc. 1407, Vol. 18 of trial transcript, July 7, 2011 testimony of Ronald E. Gilley, p. 164, lines 19-23; Doc. 1643, Vol. 19, trial transcript, July 8, 2011 testimony of Jarrod Massey, p. 102, lines 17-21; Doc. 1553, Vol. 25 of trial transcript, July 18, 2011 testimony of Jarrod Massey, p. 102, lines 21-25*) But, Massey testified at one point that he does not know the protocols of LRS.¹² (*Real Time transcript, July 14, 2011 testimony of Jarrod Massey*). Based on that, he would have no basis upon which to claim that Crosby was doing anything

¹² Q. Do you have yourself, any understanding of the rules of the Legislative Reference Service?

A. I do not generally have or I generally have an understanding of how the service operates. As far as their rule, administrative procedures, you name it, that I would assume be internal, no, sir.

The real time transcript which counsel has does not have a designated page number or line numbers. As this comes up on the screen of counsel's computer, it is page 24 and starts at line 8 of the July 14, 2011 testimony of Jarrod Massey.

other than what the rules of his job required him to do in that regard. At another point in his testimony, Massey admitted that drafts are supposed to be confidential unless otherwise authorized by the senator or representative. (*Doc. 1553, Vol. 25, July 18, 2011 testimony of Jarrod Massey, p. 118, lines 10-20*). There was no evidence that Massey occupied the same authorized status. Moreover, the testimony of Jennifer Pouncy indicated that, in general, Massey's exclusion from discussions with others was not unusual. (*Real Time Transcript, July 21 testimony of Jennifer Pouncy, p. 137, lines 5-7*)¹³

The Government introduced evidence that payments to Crosby were listed, in a business ledger, under the heading "lobbying." (*Doc. 1647, Vol. 9 of trial transcript, June 23, 2011*¹⁴ *testimony of Lynn Byrd, p. 149, lines 12-19*). But, there was no evidence that Crosby had anything to do with that designation, or that it was a designation made by anyone with knowledge of what Crosby was doing, or that it was a designation that has any meaning to

¹³ Q. Okay. And Mr. Massey was frequently excluded by other lobbyists in lobbying strategy sessions, isn't that correct?

A. [Ms. Pouncy]: Yes, sir.

(*Real Time Transcript, July 21 testimony of Jennifer Pouncy, p. 137, lines 5-7*)

¹⁴ The cover of this volume incorrectly listed the date as March 23, 2011.

the material facts in this case.¹⁵

The Government introduced evidence about how Crosby filled out some state forms at work about outside income. (*Doc. 1647, Vol. 9 of trial transcript, June 23, 2011*¹⁶ testimony of James Sumner, p. 203, lines 4-25, p. 204, lines 1-10, p. 205, lines 9-25, p. 206, lines 1-25, p. 207, lines 1-9, 18-25, p. 208, lines 1-25, p. 209, 1-14). But, Crosby did later file an amendment to reflect the questioned payments. (*Doc. 1647, Vol. 9 of trial transcript, June 23, 2011*¹⁷ testimony of James Sumner, p. 209, lines 15-25, p. 210, lines 6-13, p. 211, lines 22-25, p. 212, lines 1-4) The Government also made reference that to the fact that Crosby used an acronym for Macon County Greyhound Park (MCGP). (*Doc. 1647, Vol. 9 of trial transcript, June 23, 2011*¹⁸ testimony of James Sumner, p. 211, lines 10-21). However, the use of an acronym does not a crime make. Indeed, the testimony

¹⁵ "Q. Who made the determination as to where you put that on a ledger sheet?

"A. I [Lynn Byrd] did."

(*Doc. 1647, Vol. 9 of trial transcript, June 23, 2011 testimony of Lynn Byrd p. 152, lines 7-9*).

¹⁶ The cover of this volume incorrectly listed the date as March 23, 2011.

¹⁷ The cover of this volume incorrectly listed the date as March 23, 2011.

¹⁸ The cover of this volume incorrectly listed the date as March 23, 2011.

of FBI Special Agent McEarhern was replete with acronyms - F.D. (Doc. 1571, Vol. 13 of trial transcript, June 29, 2011 testimony of John McEarhern, p. 133, lines 7, 9, p. 134, lines 7, 17, 23, p. 135, lines 2, 15, p. 190, line 19), B.I.R. (Doc. 1647, Vol. 9 of trial transcript, June 29, 2001 testimony of John McEarhern, p. 207, line 23, p. 221, line 2, p. 224, line 24, p. 226, line 6, Doc. 1573, Vol. 14 of trial transcript, June 30, 2011 testimony of John McEarhern, p. 15, line 15; Doc. 1573, p. 124, line 22; Doc. 1674, Vol. 17 of trial transcript, June 30, 2011 testimony of John McEarhern, p. 67, line 25), AEA (Doc. 1647, p. 44, line 8, p. 54, line 23, p. 55, line 1), CDC (Real Time Transcript, July 1, 2011 testimony to John McEarhern¹⁹), SAC (Real Time Transcript, July 1, 2011 testimony of John McEarhern²⁰); SB (Doc. 1674, Vol. 17 of trial transcript, July 6, 2011 testimony of John McEarhern, p. 41, line 18). And, the same can be said for the testimony of other witnesses as well, e.g., LRS for Legislative Reference Service (Doc. 1298, Vol. 4 of trial transcript, June 15, 2011 testimony of Scott Beason, p.

¹⁹ The real time transcript which counsel has does not have a designated page number or line numbers. As this comes up on the screen of counsel's computer, it is page 12 and appears 3 lines from the bottom of the July 1, 2011 testimony of John McEarhern.

²⁰ The real time transcript which counsel has does not have a designated page number or line numbers. As this comes up on the screen of counsel's computer, it is page 23 and appears at lines 28, 38, 39, 40, and 43 of the July 1, 2011 testimony of John McEarhern.

58, lines 17, 22; Doc. 1553, Vol. 25 of trial transcript, July 18, 2011 testimony of Jarrod Massey, p. 118, lines 16), BIR for Budget Isolation Resolution (Doc. 1298. Vol. 4 of trial transcript, June 15, 2011 testimony of Scott Beason, p. 234, line 19, p. 235, lines 6-8, 13, 22, 25, p. 236, line 18; Doc. 1353, Vol. 11-B of trial transcript, June 27 testimony of Ronald Gilley, p. 29, line 15; Doc. 1407, Vol. 18 of trial transcript, July 7, 2011 testimony of Ronald Gilley, p. 167, lines 23; Doc. 1553, Vol. 25 of trial transcript, July 18, 2011 testimony of Jarrod Massey, p. 93, line 8; Doc. 1555, Vol. 25 of trial transcript, July 20, 2011 testimony of Jarrod Massey, p. 25, line 18; Doc. 1651, Vol. 31 of trial transcript, July 26, 2011 testimony of Nathan Langmack, p. 36, line 8, p. 37, line 19), and SB for Senate Bill (Doc. 1334, Vol. 10 of trial transcript, June 24, 2011 testimony of Ronald Gilley, p. 167, line 7, p. 184, line 6; Doc. 1407, Vol. 18 of trial transcript, July 7, 2011 testimony of Ronald Gilley, p. 162, line 1; Doc. 1651, Vol. 31 of trial transcript, July 26, 2011 testimony of Nathan Langmack, p. 36, line 11, p. 158, line 22, p. 159, line 12, p. 205, line 11). In any event, as this Court instructed the jury, "the mere fact of a violation of state law or employment rules and regulations is not sufficient for a conviction...." (Doc. 1640, pp. 11-12)

The government failed in its case against Crosby. At most, the Government raised a question as to why Crosby was paid. It is not enough for the Government to raise a question and request a jury or court to infer guilt from the absence of proof of a legal reason; "intuition cannot substitute for admissible evidence when a defendant is on trial." United States v. Hamblin, 911 F.2d 511, 558 (11th Cir. 1990). Merely raising a question did not suffice to satisfy the Government's burden of proving beyond a reasonable doubt the charge in the indictment beyond a reasonable doubt. Because of that, Defendant Crosby urges the entry of a judgment of acquittal on count 16 against him.

s/ Thomas M. Goggans
Ala. State Bar No. 2222-S45-T
2030 East Second Street
Montgomery AL 36106
PH: 334.834.2511
FX: 334.834.2512
e-mail: tgoggans@tgoggans.com

Attorney for Defendant
Joseph R. Crosby

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 16th day of September, 2011, electronically filed this document with the Clerk of the Court using the CM/ECF system which will send notification to all counsel of record.

s/ Thomas M. Goggans
Ala State Bar No. 2222-S45T
2030 East Second Street
Montgomery AL 36106
PH: 334.834.2511
FX: 334.834.2512
e-mail: tgoggans@tgoggans.com

Attorney for Defendant
Joseph R. Crosby