

United States v. Smith, 572 F.2d 1089, 1097 (5th Cir. 1978).²

"It is a fundamental principle of our system of criminal justice that '[a] defendant has a substantial right to be tried solely on [the] charges presented in an indictment returned by a grand jury.' [United States v. Bizzard, 615 F. 2d [1080,] 1082 [(5th Cir. 1980); Stirone [v. United States], 361 U.S. [212,] 217-18, 80 S.Ct. [270,] 273-74[, 4 L.Ed.2d252 (1960)]; United States v. Carroll, 582 F.2d 942, 944 (5th Cir. 1978)."] United States v. Weissman, 899 F.2d 1111, 1115-1116 (11th Cir. 1999). Thus, it was for the government to prove beyond a reasonable doubt that there was a quid, a pro, and a quo -- as alleged in the indictment. 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.").

The alleged quo in this case was that Crosby was paid for drafting gambling legislation favorable to McGregor. It was incumbent upon the Government to prove that - not something less, not something different.

² Decisions of the United States Court of Appeals for the Fifth Circuit decided prior to September 30, 1981 are binding precedent in the Eleventh Circuit. Bonner v. Pritchard, 661 F.2d 1206, 1207 (11th Cir.1981) (en banc).

The Government's discussion of the issue pays little attention to the quo alleged in the indictment. (Doc. 1852, pp. 18-22). The fact is 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 as was alleged in the indictment. 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 attempted to support its claim that there was sufficient evidence to support a conviction with a listing of categories of evidence. All categories fall short.

The Government points to evidence that payments to Crosby were listed, in a business ledger, under the heading "lobbying." (Doc. 1852, p. 20). They were. (*Doc. 1647, Vol. 9 of trial transcript, June 23, 2011*³ *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

³ The cover of this volume incorrectly listed the date as March 23, 2011.

anyone with knowledge of what Crosby was doing, or that it was a designation that has any meaning to the material facts in this case.⁴ This evidence showed nothing about the existence of any quid pro quo agreement as alleged in the indictment.

The Government points to evidence of conversations between McGregor and Crosby about SB 380. (Doc. 1852, p. 20). As Crosby discussed in his Rule 29 memorandum, the Government did introduce evidence of discussions between McGregor and Crosby about SB380. (Doc. 1812, pp. 13-16) The Government waves around a conversation between Crosby and McGregor in which "McGregor told defendant Crosby not to tell the bill's sponsor, Senator Bedford, about their discussion. Ex. J-127 at 1:29." (Doc. 1852, p. 20) The conversation in question, J-127, merely showed that McGregor was giving Crosby a heads-up about what Senator Bedford wanted Crosby to do. Senator Bedford was, at the moment, too busy dealing with the issue of a sick relative, to call Crosby himself. McGregor was simply giving Crosby a heads-up, to let him get a jump on the task. (J-146, p. 1 lines 18-43, p. 4 lines 26-44, p. 8 lines 24-32, p. 9 lines 7-23).

⁴ "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).

Further, it is reasonable to conclude that McGregor did not want Senator Bedford to think that McGregor doubted in any way his attention to task even when having to deal with a sick relative. Whatever the conversation may have shown, it did not show a bribe as charged in the indictment.

As Crosby noted in his Rule 29 memorandum, on numerous occasions, Crosby drafted bills which would have adversely affected McGregor's financial interests. (Doc. 1812, pp. 9-13).

The Government attempts to counter that evidence by positing:

[D]efendant Crosby did not necessarily have to favor defendant McGregor's interests all the time. Indeed, to have done so might have exposed the illicit relationship between the two defendants, costing defendant Crosby the very job that justified defendant McGregor's monthly payment. Put differently, protecting both his job and his illicit arrangement required taking action that was not necessarily always consistent with defendant McGregor's interests.

(Doc. 1852, pp. 20-21). There is no evidentiary support whatsoever for this suggested inference.

There was no evidence that Crosby drafted any bill in any way contrary to his good-faith understanding of the wishes of its sponsor. There was no evidence that McGregor ever expected that he would, or that there was any agreement that he would. The Government takes this picture - of Crosby drafting bills in each instance as each bill's particular sponsor wants - and tries to turn it into a crime by postulating that in each instance Crosby was really choosing which bills he would skew in

McGregor's favor and which ones he would not. But, there was no evidence that any such thing occurred. The Government is not inviting consideration of a fair inference but wild speculation not based upon evidence.

The Government points to one point of drafting, regarding "a reduction in the time period by which gaming appointments would be made." (Doc. 1852, p. 22). The Government again invites an inference of a crime without proof. There was no evidence that Senator Bedford (the sponsor) wanted something different from what McGregor wanted on this point about the time period for gaming appointments. There was no evidence that Crosby's job entailed pushing back against the suggestions of a person who was authorized by the bill's sponsor to work with LRS. There was no evidence that, in drafting other bills, Crosby ever pushed back against the sponsor or against those people whom the sponsor authorized to work on the bill. The Government did not prove that Crosby was doing anything in this instance other than the ordinary course of LRS work. The Government, again, invites not fair inferences from the evidence but wild speculation not based upon the evidence.

The Government points to evidence that the payments to Crosby ended in 2010 not long after the investigation became public. (Doc. 1852, p. 21). No reasonable person would think that stopping payments would prevent any investigators from

discovering them. Further, the evidence established that Victoryland's finances had taken a dramatic plunge and that cutbacks were everywhere. (*Doc. 1647, Vol. 9 of trial transcript, June 23, 2011 testimony of Lynn Byrd p. 156, lines 16-21*). There is no reasonable inference of crime to be drawn from this evidence.

The Government points to evidence about how Crosby filled out some state forms at work about outside income. (*Doc. 1852, p. 21*). The Government did introduce evidence about how Crosby filled out some state forms at work about outside income. (*Doc. 1647, Vol. 9 of trial transcript, June 23, 2011⁵ 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, 2011⁶ 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 to the fact that Crosby used an acronym for Macon County Greyhound Park

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(MCGP). (*Doc. 1647, Vol. 9 of trial transcript, June 23, 2011*⁷ *testimony of James Sumner, p. 211, lines 10-21*). However, the use of an acronym does not a crime make. As Crosby discussed in his Rule 29 memorandum, the trial testimony was peppered with acronyms coming from the mouths of various witnesses. (*Doc. 1755, pp. 19-21*) 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. 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

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CERTIFICATE OF SERVICE

I hereby certify that I have on this the 7th day of October, 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