

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 MILTON E. MCGREGOR,)
 RONALD E. GILLEY,)
 THOMAS E. COKER,)
 ROBERT B. GEDDIE, JR.,)
 LARRY P. MEANS,)
 JAMES E. PREUITT,)
 QUINTON T. ROSS, JR.,)
 HARRI ANNE H. SMITH,)
 JARRELL W. WALKER, JR., and)
 JOSEPH R. CROSBY,)
)
 Defendants.)

CR. NO. 2:10cr186-MHT

**DEFENDANT GEDDIE’S RESPONSE TO UNITED STATES’
SUBMISSION TO THE COURT REGARDING THE
SUFFICIENCY OF THE EVIDENCE AS TO COUNT
ONE OF THE INDICTMENT [DOC. # 1521]**

Defendant Geddie responds to the United States’ Submission to the Court Regarding the Sufficiency of the Evidence as to Count One of the Indictment [Doc. #1521] (the “Government’s Submission¹”) and submits the following:

I. Introduction.

The Government totally ignores the basic legal standards the Court must apply in determining whether the evidence sufficiently demonstrates Defendant Geddie was a knowing and willful

¹References to the Government’s Submission will be made by the designation (GS-pg.____)

member of the conspiracy. If the evidence fails to meet the legal standards, the statements of alleged coconspirators are hearsay and inadmissible against Defendant Geddie.

This Court declined to hold a *James* hearing² to determine the sufficiency of the Government's evidence, even though it is the preferred practice. *United States v. Espino-Perez*, 798 F.2d 439 (11th Cir. 1986). Instead, the Court permitted the Government to introduce hearsay evidence without regard for whether the Government could establish the essential prerequisites for admission of that evidence: 1) that a conspiracy existed; 2) the conspiracy included the declarant and the defendant against whom the statement was offered; and 3) the statement was made during the course and in furtherance of the conspiracy. *United States v. Magluta*, 418 F.3d 1166, 1177-78 (11th Cir. 2005); *Bourjaily v. United States*, 483 U.S. 171 (1987); *United States v. Hasner*, 340 F.3d 1261 (11th Cir. 2003).

The Government has the burden of proof to establish these essential requirements by a preponderance of the evidence. *Bourjaily*, 483 U.S. at 176; *Magluta*, 418 F.3d at 1177. In the Court's review of the evidence, Rule 801(d)(2)(E), FRE, permits the Court to consider coconspirator's statements; however those statements "are not alone sufficient to establish the declarant's authority." Thus, the Government was required to produce additional evidence, independent of any coconspirator's statement, to establish Defendant Geddie's knowing and willful participation in the conspiracy. *Hasner*, 340 F.3d at 1274-75 (discussing the "independent evidence" that supported introduction of the coconspirator's statements). As discussed below, the Government failed to meet its burden of proof and therefore coconspirator statements are inadmissible against Defendant Geddie.

²*United States v. James*, 590 F.2d 575 (5th Cir. 1979).

II. The Government's Submission as to Defendant Geddie.

The Government obviously assumes anyone who worked to get pro-gambling legislation passed by the Alabama legislature is a member of the conspiracy. This absurd proposition is replete throughout the Government's Submission. What it ignores is that many people supported the pro-gambling legislation³ and not everyone joined the "Gilley Team" in an illegal conspiracy to bribe legislators to vote for the bill. Here, there was no evidence Defendant Geddie joined the "Gilley Team" and no evidence he offered cash money, a sham consulting job, or any other thing of value to any legislator in return for their vote.

The Government's Submission does not consider the fact that, as a lobbyist, Defendant Geddie's profession requires him to: talk to his clients; talk to other lobbyists; talk to legislators; determine what legislators are committed to support or oppose a bill; determine what legislators are uncommitted and therefore should be the subject of further lobbying attempts; discuss amendments to bills to enhance his client's position; set up PACs and manage them to receive and disburse campaign contributions; go to fundraisers, and a myriad of other daily activities that are commonplace and legal. Nevertheless, these are the facts upon which the Government primarily relies to support a finding Defendant Geddie was a member of the conspiracy.

Defendant Geddie's alleged role in the conspiracy is set forth in approximately two pages of the Government's Submission starting on page nine. Without parsing every word in those two pages, suffice it to say the following allegations fail to demonstrate any connection with illegal activity and are totally consistent with legitimate lobbying activities:

³One of the staunchest supporters of the gaming bill was Dr. Paul Hubbert of the AEA, who saw the bill as an opportunity to raise additional funds for education.

- Defendant Geddie is “one of two principals with Fine and Geddie Associates⁴ (Fine and Geddie), a governmental affairs lobbying firm.” (GS-pg. 10);
- Mr. McGregor “was one of the firm’s clients.” (*Id.*);
- According to Mr. Massey, Defendant Geddie “was a primary lobbyist in the effort to secure votes in favor of pro-gaming legislation.” (GS-pg. 11);
- Defendant Geddie “was a member of the Sweet Home Alabama Coalition that supported the 2009 pro-gambling legislation.” (*Id.*);
- Defendant Geddie “was responsible for securing votes in favor of SB380 in 2010 until the failure of the BIR on March 3, 2010.” (*Id.*);
- “During the pendency of SB380, [Mr.] Massey spoke with Defendant Geddie on seven or eight occasions.” (*Id.*);
- Mr. Massey “relied upon [Defendant Geddie] for information on the bill.” (*Id.*);

None of these facts even remotely implicate Defendant Geddie in an illegal conspiracy to buy the votes of legislators and the only other evidence the Government relies upon are the allegations relating to Barry Mask and a telephone call between Mr. McGregor and Defendant Geddie discussing Representative David Grimes. Because the Government focused on these latter two incidents, each will be discussed separately below.

III. The Barry Mask allegations.

The Barry Mask allegations arise from two phone calls, one on February 15, the other on February 16. The Government alleges that in the February 15 phone call “defendant McGregor

⁴The name of the firm is actually Fine Geddie Associates.

promised [Mr. Mask] significant campaign help, explicitly connecting campaign contributions to the need for Mask's vote on the pro-gambling legislation." (GS-pg. 10, citing J-004, the transcript of the call). This is an inaccurate description of that conversation.

For the first thirteen pages of the February 15 transcript, Mr. McGregor delivered a virtual civics lesson on the merits of the bill, while specifically addressing what Mr. Mask said was his "main concern" with the bill.⁵ During those thirteen pages, Mr. McGregor never mentioned campaign contributions or otherwise raised the issue of giving Mr. Mask anything of value in return for his vote. To the contrary, Mr. McGregor made it clear he **was not** asking for Mr. Mask's vote: "I would not be a part of asking you a house member to vote for a constitutional amendment⁶ on this issue until it had passed the senate." J-004 at pgs. 9-10.

Thereafter, Mr. Mask first broached his need for campaign contributions – not Mr. McGregor. Indeed, a fair reading of the transcript reveals Mr. Mask was soliciting campaign contributions from Mr. McGregor – not Mr. McGregor offering a contribution to Mr. Mask. Starting on page 14 of the transcript, Mr. Mask first raised the issue by stating, it is "just hard for me and, and my district as you know . . . to take any help from you [Mr. McGregor] and the next thing you know it's on my PAC report and these people go hog wild up here." J-004 at pg. 14. Mr. Mask said, "I just would appreciate you know any support, you know here and there and, and just understanding the position about me." *Id.* at pg. 15. Mr. Mask agreed with Mr. McGregor's statement, "I wouldn't

⁵Mr. Mask testified his "biggest concern" was that operators not be permitted to make campaign contributions to the members of the state gaming commission.

⁶Following February 15, the bill went through many revisions, going from over forty pages down to eight. When Mr. Mask and Mr. McGregor spoke, there was no vote pending in the House of Representatives and the bill ultimately voted on by the Senate was substantially different from the one that had been proposed, as of February 15.

think that you would want support directly from me,” and Mr. Mask replied, “I can’t have that. You know that.” *Id.* Mr. McGregor mentioned he had a “lot of friends” who “I can certainly influence and talk to on who they support.”⁷ *Id.*

Mr. Mask said, “if you can hook me up with some of your friends, I mean how much do you think they’d be willing to help me? I mean.” *Id.* at 17. Mr. Mask testified he asked this question in order to get Mr. McGregor to “name a specific price,” in other words, it was “just to try to see how far Mr. McGregor would go.” This was obviously an attempt by Mr. Mask to get Mr. McGregor to offer an explicit *quid pro quo* that would be necessary to complete the crime of bribery.⁸ Mr. McGregor did not answer the question and instead said, “I can get you significant help for your campaign⁹ not from me, from people that I have a great working relationship with, business type people.” *Id.* When the initial attempt to get Mr. McGregor to name a price failed, Mr. Mask tried it a different way, naming his own price: “You’re talking, you know five hundred or a couple . . . 500 or a couple of thousand, I mean?” *Id.* Mr. McGregor again declined the bait, saying simply “Oh no, I, I said significant help.” *Id.*

Undaunted, Mr. Mask advised Mr. McGregor he was having a fundraiser in Tallahassee that night and asked if, “any of your folks [inaudible] going to attend with a campaign contribution

⁷Mr. Mask conceded in his trial testimony that “support” could take many different forms, including a campaign contribution, working in the campaign, giving a speech in support of a candidate (like Bill Clinton did for President Obama), talking to one’s friends, putting up a yard sign, or even having a bumper sticker.

⁸After all, Mr. Mask was working with the FBI at this time and specifically targeted Mr. McGregor in this call.

⁹Mr. McGregor said he would get “help for your campaign,” he did not say campaign contributions.

tonight?” *Id.* at pg. 19. Mr. McGregor said “this is the first I’ve heard of it [the fundraiser].” *Id.* at pg 20.

Importantly, Mr. McGregor did not agree to participate in the fundraiser and did not agree to make any contribution to Mr. Mask. In addition, during this entire conversation, Mr. Mask never agreed to vote for any gambling bill and Mr. McGregor never offered him anything of value to do so. There was simply never an explicit *quid pro quo* and, as noted above, any fair reading of the transcript results in only one conclusion: Mr. Mask, not Mr. McGregor, broke the unwritten rule against talking about fundraising while discussing legislation. In the end, no bribe was offered, none was accepted, and no official action was promised.

The next day, February 16, 2010, Mr. Mask again spoke to Mr. McGregor. During this call, Mr. McGregor said, he “got Bob and Ben to go over to your function last night and they were impressed.” J-006 at pg. 2. Mr. McGregor further said,

I called Bob right at well, about 30 minutes after I talked with you to see if he could go and represent, represent me and, and he said he’d be glad to and, uh, so anyway we talked about what, what I wanted him to do and, uh, and he did it. *Id.*

Mr. McGregor confirmed Defendant Geddie went to the fundraiser to “represent me.” Mr. McGregor **did not say** he asked Defendant Geddie to deliver any campaign contributions to Mr. Mask on his behalf and his further statement that “he did it,¹⁰” only infers Defendant Geddie went to the fundraiser because Mr. McGregor asked him to go – it does not confirm Defendant Geddie’s involvement in a scheme to bribe Mr. Mask.

¹⁰The Government’s Submission mischaracterizes this comment as Mr. McGregor “told defendant Geddie what to do, and defendant Geddie followed his instructions.” (GS-pg. 10).

Clearly, Defendant Geddie was not a party to either call between Mr. Mask and Mr. McGregor. In fact, there is no evidence Mr. Geddie knew Mr. Mask and Mr. McGregor had spoken to each other. Even if Mr. McGregor told Defendant Geddie to go to the fundraiser and give Mr. Mask the two PAC checks, there is no evidence Defendant Geddie knew of any *quid pro quo* in the February 15 phone call between Mr. Mask and Mr. McGregor.

That Defendant Geddie did not know of any *quid pro quo* is further confirmed by Mr. Mask. Mr. Mask testified he had no conversation about any legislation with Mr. Geddie at the fundraiser that night **and he has never spoken to Defendant Geddie** about any gambling bill. In addition, Mr. Mask could remember no conversation he had with Defendant Geddie concerning the source of the campaign contributions, either at the fundraiser or the next day at the State House. As a result, the evidence conclusively establishes there could be no explicit *quid pro quo* between Mr. Mask and Defendant Geddie when Mr. Geddie delivered the two PAC checks to the fundraiser, or at any other time.

The Government's claim that Defendant Geddie instructed an employee to alter contribution ledgers to "conceal the corrupt nature of the payment" to Mr. Mask, is contrary to the uncontradicted evidence. (GS-pg. 9-10). The testimony of the employee was that she initially entered the contributions on the incorrect (McGregor) ledger, but she corrected the entry within a day or two of having made the incorrect entry. Clerical errors occur everyday in the normal course of business affairs – this is certainly not indicative of corrupt activity.

In addition, the two PAC checks delivered to the fundraiser by Defendant Geddie were not the first or last campaign contribution made by Fine/Geddie PACs to Mr. Mask. Mr. Mask testified he received two campaign contributions from Fine/Geddie PACs during his 2006 election campaign

and he received an additional contribution from one of those PACs later in 2010. None of these contributions were attributed to Mr. McGregor on the FGA internal ledgers.

IV. The telephone call referencing David Grimes.

Finally, the Government stoops low while trying to find some shred of evidence to justify including Defendant Geddie in the conspiracy. The Government's argument regarding Representative David Grimes is set forth below:

Defendant Geddie's knowledge and approval of the illicit effort to pass the pro-gambling legislation was confirmed in a call with defendant McGregor regarding Representative David Grimes. During the call, defendant Geddie told defendant McGregor that the only reason people were supporting Grimes was because of "one fucking vote." (GS-pg. 11)

The call referenced by the Government took place on March 31, 2010. (J-169). During the call, Defendant Geddie and Mr. McGregor discussed Rep. Grimes, but there was no mention of bribing Rep. Grimes or doing anything else illegal. The fact that "people were supporting Grimes" because he was "one fucking vote" adds nothing to the Government's argument. Indeed, this call is the only mention of Rep. Grimes in the entire trial. Rep. Grimes was not called as a witness, no evidence was introduced that Mr. McGregor gave him a campaign contribution, and there is absolutely no evidence of bribery or other illegal conduct relating to him. Simply put, this discussion of Rep. Grimes between Defendant Geddie and Mr. McGregor has no legal bearing on the issues to be decided by the Court.

V. Conclusion.

For the reasons set forth above, this Court should find that the Government failed to establish Defendant Geddie was a knowing and willful participant in the conspiracy. Therefore, all statements

of coconspirators are inadmissible against him, including those made by Mr. McGregor in the February 15 and February 16 phone calls.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ James P. Judkins
JAMES P. JUDKINS