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

UNITED STATES OF AMERICA,	}	
	}	
Plaintiff,	}	
	}	
vs.	}	**Case No.: 2:10-CR-186-MHT-WC**
	}	
ROBERT B. GEDDIE, JR.,	}	
	}	
Defendant.	}	

DEFENDANT ROBERT GEDDIE'S
SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
JUDGMENT OF ACQUITTAL ON COUNTS THREE AND THIRTY-NINE

Pursuant to Federal Rule of Criminal Procedure 29, Defendant Robert Geddie respectfully submits the following supplemental memorandum in support of entering judgment of acquittal on Counts Three and Thirty-Nine.

I. Judgment of acquittal on Count Three is due to be entered.

Geddie adopts the arguments and authority submitted by McGregor in his Supplemental Submission in Support of Renewed Motion for Judgment of Acquittal (Doc. #1576), filed July 29, 2011.

In addition, Geddie emphasizes that there is no evidence in the record to establish or even suggest that he had any knowledge whatsoever of the calls between McGregor and Mask or the contents thereof.

Without that threshold link, and even crediting the Government's ambitious interpretations of those calls, it is factually impossible – short of pure speculation – to establish a "bribe" chargeable against Geddie. That conclusion is further amplified by Mask's testimony that Geddie never discussed the pending gaming legislation before, at the time of, or even after

the campaign contributions at issue. The Government, therefore, has failed to present any evidence whatsoever satisfying the elements associated with a bribery charge.

II. Judgment of acquittal on Count Thirty-Nine is due to be entered.

Count Thirty-Nine charges Geddie with violating 15 U.S.C. § 1512(c)(2) by submitting a purportedly false contribution ledger pursuant to a grand jury subpoena issued to Fine, Geddie & Associates. For the following reasons, Geddie respectfully requests that the Court enter judgment of acquittal on that Count.

First, Count Thirty-Nine cannot be predicated on the change in the contribution ledger – there must be proof beyond a reasonable doubt that there existed a "nexus" between the defendant's obstructive act and an official proceeding. United States v. Friske, 640 F.3d 1288, 1292 (11th Cir. 2011) ("We now join our sister circuits in concluding that § 1512(c)(2) also contains a nexus requirement as articulated in Aguilar.").

To establish a "nexus," it is the Government's burden to prove that the defendant "knew of, or at least foresaw," the official proceeding. Id. Here, the record is devoid of any evidence whatsoever that there existed a "nexus" between the change in the ledger and the grand jury's investigation:

(1) The Government has presented no evidence that Cheryl Farrow – or anyone else, for that matter – altered the contribution ledger after Fine, Geddie & Associates received the grand jury's document subpoena. Indeed, the evidence establishes that Cheryl Farrow corrected the contribution ledger before the Government publicly revealed the investigation and certainly before the document subpoena was received by Fine, Geddie & Associates.

(2) The Government has presented no evidence that Geddie – or anyone else, for that matter – could have reasonably foreseen the investigation precipitating this case at the time of the correction to the contribution ledger. During oral argument, the Government has offered only conjecture on that point – there is no evidence from which to draw that conclusion.

Taken together, the absence of proof on both fronts precludes the Government from using the ledger's correction as the predicate for obstruction under § 1512(c)(2). See Friske, 640 F.3d at 1293 ("We are unable to find any evidence in the record that Friske knew of or foresaw the forfeiture proceeding. The only way the jury could conclude that Friske knew his actions were likely to affect a forfeiture proceeding, in the absence of any evidence that he was aware that a forfeiture proceeding was pending or foreseeable, would be through speculation. But speculation is not enough to sustain a conviction based on circumstantial evidence.").

Second, effectively conceding that weakness, the Government has shifted its theory and focused on the act of production – not the change in the ledger or the ledger's accuracy. But a focus on production is unavailing:

(1) The Government has presented no evidence that Geddie produced anything to the grand jury. As Cheryl Farrow explained, the document subpoena was issued to Fine, Geddie & Associates, and Fine, Geddie & Associates produced documents to the grand jury – not Geddie.

(2) The Government has presented no evidence that Geddie "directed" Cheryl Farrow to include or not to include particular documents in the production pursuant to the document subpoena.

(3) The Government has presented no evidence that Geddie even knew that the particular ledger at issue was being produced – only that he cursorily reviewed the gathered documents.

Viewed in the light most favorable to the Government, the evidence suggests only that (1) Fine, Geddie & Associates received a document subpoena; (2) Cheryl Farrow, as custodian of records, gathered responsive documents; and (3) Fine, Geddie & Associates produced those materials that fell within the document subpoena's scope.

Conspicuously absent from that sequence of events is any suggestion or evidence that Geddie, in any meaningful way, was involved with that process. Accordingly, in an effort to overcome the inability to establish a "nexus," the Government has identified a purportedly obstructive act not even committed by Geddie.

Third, even if (1) the produced contribution ledger was "false" and (2) Geddie is personally chargeable with the firm's document production – and, to be certain, neither assumption is correct – the Government has failed to establish that Geddie acted with the requisite intent.

Under § 1512(c)(2), the Government must prove beyond a reasonable doubt that Geddie acted "corruptly." According to the Government, "[t]o act 'corruptly' means to act voluntarily, deliberately, and dishonestly with the specific intent to sway, change, or prevent some action likely to be taken in the official proceeding." (Government's Proposed Jury Instructions, Doc. #1194 at 53) (emphasis added).

Here, even when viewed in the light most favorable to the Government, the evidence is woefully inadequate to establish or even suggest that Geddie acted "corruptly." On this record, the Government's evidence establishes only that – in response to a document subpoena – Fine,

Geddie & Associates tendered a ledger to the grand jury without any corresponding assurance whatsoever of the ledger's accuracy.

In United States v. Moon, 718 F.2d 1210 (2d Cir. 1982), the Second Circuit squarely held that producing false documents – in compliance with a grand jury subpoena – is legally insufficient to sustain a conviction for obstructing justice. There, the defendant was convicted of violating 18 U.S.C. § 1503.[1] 718 F.2d at 1236. For the obstructive act, the Government presented "ample proof" that the defendant produced to the grand jury a ledger and loan agreements that, in fact, had been falsified before the subpoena's issuance. Id.

On appeal, however, the Second Circuit reversed the defendant's conviction because the Government had not established that he produced the false documents with the requisite intent:

> Kamiyama contends that his conviction for knowingly submitting false and misleading documents to the grand jury with intent corruptly to impede its investigation, in violation of 18 U.S.C. Sec. 1503 (Supp. V 1981), must be set aside. Specifically, he asserts that he only submitted the documents in question (the Family Fund Ledger and European Loan Agreements) to the grand jury because it had subpoenaed them and that there was insufficient evidence that he intended to impede its investigation. In response to this challenge, the government answers that Kamiyama's corrupt intent was adequately demonstrated by the facts that he could have resisted production of the documents on Fifth Amendment grounds and that he vouched for the accuracy of the documents in his testimony before the grand jury. Specific intent to impede the administration of justice is an essential element of a Sec. 1503 violation, which the government must establish beyond a reasonable doubt. Viewing the evidence in the light most favorable to the prosecution, we are unpersuaded that Kamiyama's corrupt intent was adequately proved.
>
> In examining the evidence underlying this Count, we may look only to that evidence actually introduced before the petit jury. There would be no problem with the government's contention had it introduced proof before the petit

[1] Under § 1503, it is a crime to "corruptly . . . influence[], obstruct, or impede[], or endeavor to influence, obstruct, or impede, the due administration of justice . . . ."

Although the Second Circuit in Moon analyzed whether the evidence supported a conviction under § 1503, the difference is without a distinction – both statutes are comparably broad and involve virtually identical terms. Under § 1512(c)(2), it is a crime to "corruptly . . . obstruct[], influence[], or impede[] any official proceeding, or attempt[] to do so." 15 U.S.C. § 1512(c)(2). To the extent that there are difference between the two statutes, the differences are immaterial to Count Thirty-Nine.

> jury to the effect that Kamiyama had not only produced the questionable documents, but had also affirmatively vouched for their accuracy. Similarly, the government's case would be more persuasive were there any evidence that Kamiyama had submitted the documents with the knowledge that, had he chosen, he could have resisted production on the grounds of self-incrimination. On both of these points the government fails to direct us to any portion of the trial record in which such evidence was brought to the petit jury's attention. Nor have we, after reviewing the actual trial transcript, found any such evidence.
>
> What remains to be answered is whether the petit jury could still properly infer corrupt intent from the fact that Kamiyama submitted the false documents to the grand jury knowing that the documents were material to that jury's investigation. Intent to obstruct justice is normally something that a jury may infer from all of the surrounding facts and circumstances. Were it not for the fact that the documents were subpoenaed, such an inference would doubtless have been permissible in this case. But here the ledger and loan agreements were produced pursuant to subpoena and even though there was ample proof of their being falsely backdated, there was no evidence of Kamiyama's corrupt intent in producing them. Whether or not Kamiyama could have resisted production, as the government argues, evidence of this government theory was not before the trial jury. Without it, a reasonable doubt as to Kamiyama's mens rea exists. Therefore, his Count Seven conviction must be reversed.

Id. (internal citations omitted) (emphasis added); see also United States v. Mullins, 22 F.3d 1365, 1370 (6th Cir. 1994) ("[In Moon], [t]he court reversed the conviction . . . because . . . the fraudulent creation of the documents was done before the jury subpoenaed the information and before such a subpoena could have been reasonably expected. Thus, an intent to obstruct the grand jury could not be shown.") (citations omitted); United States v. McComb, 744 F.2d 555, 562 n.6 (7th Cir. 1984) ("In Moon, the documents had been altered long before they were subpoenaed, and there was no evidence that the defendant knew that he could have resisted production of those documents on Fifth Amendment grounds. The court found no evidence that the defendant intended to impede the investigation.").

Here, Moon is a useful guidepost for identifying the fatal absences of proof in the Government's case against Geddie:

(1) The Government failed to produce any evidence that Cheryl Farrow corrected the ledger after Fine, Geddie & Associates received the grand jury's document subpoena.

(2) The Government failed to produce any evidence that Geddie or even Cheryl Farrow "vouched" for the ledger's accuracy before the grand jury.

(3) The Government failed to produce any evidence that Geddie could have resisted the document subpoena or otherwise invoked his privilege against self-incrimination.

In short, the evidence shows that Fine, Geddie & Associates made no effort whatsoever to subvert the document subpoena or otherwise sidestep its scope. The document subpoena requested materials related to Milton McGregor, and Fine, Geddie & Associates produced the ledger in compliance. To the minimal extent that Geddie was involved in that process, the Government has not established any evidence of his allegedly corrupt intent.

Accordingly, as the Second Circuit explained in Moon, mere compliance with a grand jury's document subpoena is insufficient as a matter of law to establish a defendant's corrupt intent. For these reasons, Geddie respectfully requests that the Court enter a judgment of acquittal on Count Thirty-Nine.

III. Conclusion

Accordingly, in addition to those reasons previously submitted, (Doc. #1529), filed July 26, 2011, Geddie respectfully requests that the Court enter judgment of acquittal on Counts Three and Thirty-Nine.

Respectfully submitted,

Dated: Friday, July 29, 2011

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