

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 MOTION FOR JUDGMENT OF ACQUITTAL**

Defendant Robert B. Geddie, Jr. moves for a Judgment of Acquittal pursuant to Rule 29 Federal Rules of Criminal Procedure, and in support would show:

**I. Introduction.**

In ruling on a motion for judgment of acquittal, the Court must determine “whether there is substantial evidence from which a jury could reasonably find the defendant[] guilty beyond a reasonable doubt.” *United States v. Gregory*, 730 F.2d 692, 706 (11<sup>th</sup> Cir. 1984); *United States v. O’Keefe*, 825 F.2d 314 (11<sup>th</sup> Cir. 1987); *United States v. Moore*, 504 F.3d 1345, 1348 (11<sup>th</sup> Cir. 2007)(reversing a district court ruling denying a motion for judgment of acquittal at the close of the

government's case because the Government failed to present sufficient evidence of a "knowing" violation of the statute). As will be discussed in detail below, the Government's case failed to establish the essential elements of the offenses charged against Defendant Geddie. Therefore, this Court should enter a judgment of acquittal on all counts.

Defendant Geddie is charged in the following counts of the Indictment:

Count 1	Conspiracy
Count 3	Bribery (Barry Mask)
Counts 23-33	Honest Services Mail & Wire Fraud
Count 39	Obstruction of Justice

The substantive counts of the Indictment are Counts 3 and 39. Both of those counts relate to the campaign contributions made to Barry Mask and the resulting entries made in the ledgers at Fine Geddie Associates ("FGA"). In this motion, Defendant Geddie will first address the sufficiency of the evidence as to those two counts before turning to the conspiracy and honest services fraud counts.<sup>1</sup>

## **II. Count 3 – The Alleged Bribery of Barry Mask.**

Count 3 of the Indictment charges that on February 15, 2010, Defendant Geddie knowingly and corruptly gave \$5,000 to State Representative Barry Mask with the intent to influence and

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<sup>1</sup>This motion is submitted pursuant to the Court's instruction to discuss the facts, rather than the law. Certain legal principals are included in this motion in general terms to make a point; otherwise Defendant Geddie has avoided citations of authority. Defendant Geddie has focused this motion on the evidence directed to him individually. There are other grounds for judgment of acquittal that will apply to all defendants and Defendant Geddie intends to adopt the arguments of other defendants in that regard. By not including those arguments in this motion, Defendant Geddie does not intend to waive any argument in support of a judgment of acquittal.

reward Mr. Mask in connection with his vote on SB 380.<sup>2</sup> The \$5,000 in question consisted of two PAC checks, each in the amount of \$2500, issued by two Fine/Geddie PACs, and signed by both Joe Fine and Defendant Geddie, the PAC managers. It is undisputed these two PAC checks were campaign contributions for Mr. Mask's reelection campaign. Thus, as a matter of law, the Government was required to prove these campaign contributions were an explicit *quid pro quo* for Mr. Mask's affirmative vote on SB 380. As to Defendant Geddie, the evidence failed to establish an explicit *quid pro quo*, as well as the other essential elements of the offense.

The Government's case against Defendant Geddie on this count is premised upon two phone calls between Mr. Mask and Defendant McGregor (the Mask-McGregor phone calls) and the testimony of Mr. Mask, Debbie Moore, and to some extent Cheryl Farrow.<sup>3</sup> Defendant Geddie was not a party to the Mask-McGregor phone calls **and** there is no evidence Defendant Geddie knew Mr. McGregor had talked to Mr. Mask. The Mask-McGregor conversations do not establish an explicit *quid pro quo*. Mr. Mask did not promise to vote for the bill and there was no promise by Mr. McGregor to provide a contribution in exchange for a vote. Even in the unlikely event this Court should find the Mask-McGregor phone calls could be construed to be a bribe offer by Defendant McGregor, there is no evidence Defendant Geddie knew a bribe had been offered or that he was a **knowing** conduit through which the bribe would be transmitted. Simply put, the Government has

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<sup>2</sup>The Indictment does not allege an explicit *quid pro quo* as an element of this count for two likely reasons: 1) the grand jury was never instructed on the necessity of an explicit *quid pro quo*; and 2) there was no evidence of an explicit *quid pro quo* that would form the factual basis for the allegation.

<sup>3</sup>Because Ms. Farrow's testimony is primarily directed to Count 39, it will be discussed in detail below under the Count 39 argument.

offered no evidence Defendant Geddie had knowledge of the offering of a bribe or that he willfully and corruptly participated therein.<sup>4</sup>

Mr. Mask testified he was having a fundraiser on February 15, 2010, at Johnny G's Bar-B-Q in Tallassee, Alabama. Shortly before the event, Wil Benefield called Ms. Moore from a phone with a Victoryland telephone number. Mr. Benefield said he wanted to buy all of the remaining tickets to the fundraiser. When Ms. Moore told Mr. Mask about the phone call, Mr. Mask said he didn't want gambling money, so Ms. Moore called Mr. Benefield back and told him the event was sold out, to which Mr. Benefield responded, "we're coming anyway." This caused Mr. Mask some concern that Mr. Benefield [and perhaps others] would cause a disturbance at the fundraiser.

Thereafter, Mr. Mask received a voice mail from Mr. McGregor asking Mr. Mask to return his phone call. Mr. Mask contacted law enforcement and, under the auspices of the FBI, tape recorded two phone calls with Mr. McGregor, one on February 15 and the second on February 16, 2010. Although the FBI provided Mr. Mask with recording equipment he could use at any time, he did not tape record any phone calls or meetings with Defendant Geddie.

When Mr. Mask called Mr. McGregor on Monday, February 15, 2010, there was no discussion of Wil Benefield's call to Ms. Moore. Instead, Mr. McGregor, after some pleasantries, asked Mr. Mask about a recent conversation Mr. Mask had with Robert Lambert, a constituent of

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<sup>4</sup>The evidence fails to establish Defendant Geddie had any knowledge of: (1) the phone calls between Wil Benefield and Ms. Moore or the call between Robert Lambert and Mr. Mask; or (2) any pre-conceived plan on the part of Mr. McGregor to bribe Mr. Mask (or any other legislator). To the contrary, all of the evidence indicates Mr. McGregor's initial contact with Mr. Mask was precipitated by a phone call between Mr. Mask and Robert Lambert that had nothing to do with Defendant Geddie.

Mr. Mask who raced greyhounds at Victoryland.<sup>5</sup> J-004 at pg. 3. During the phone call with Mr. McGregor, Mr. Mask confirmed he told Mr. Lambert his “biggest concern” with the gaming bill was that gambling operators be precluded from making political contributions to the state gaming commissioners and, if the bill were amended to prohibit such contributions, he would consider voting for it.<sup>6</sup> Mr. McGregor told Mr. Mask he would not make those type of contributions and 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 amendment on this issue until it had passed the senate.” *Id.* at pgs. 9-10. In fact, the “simple bill” eventually passed by the Senate was not drafted until weeks later. At no time during this phone call did Mr. Mask agree to vote for the bill, even if it were amended to include a provision prohibiting the campaign contributions.

Despite having testified it was improper to discuss legislative votes and campaign contributions during the same conversation, Mr. Mask violated this proscription – not Mr. McGregor. Indeed, for the first thirteen pages of the transcript, Mr. McGregor never mentioned campaign contributions. It was Mr. Mask who first broached the issue of campaign contributions 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.” *Id.* at pg. 14. Mr. Mask said, “I just would appreciate you know any support, you know here

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<sup>5</sup>Mr. Mask testified on direct that Mr. Lambert said, “we can get you a lot of support, Barry, if you support this thing.” On cross-examination, Mr. Mask confirmed there was nothing improper about Robert Lambert’s phone call and that Mr. Lambert actually came to the fundraiser and gave him a petition.

<sup>6</sup>Mr. Mask testified he said the same thing in a public hearing before the House Tourism Committee on January 20, 2010, and reiterated in his testimony that this issue was his “main concern” with the bill.

and there and, and just understanding the position about me.” *Id.* at pg. 15. Mr. Mask agreed with Mr. McGregor’s statement that, “I wouldn’t think that you would want support directly from me,” and Mr. Mask replied, “I can’t have that. You know that.” *Id.* Mr. McGregor then said he had a “lot of friends” who “I can certainly influence and talk to on who they support.” *Id.* Mr. 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.

Mr. Mask then pointedly solicited and prolonged this discussion of a campaign contribution from Mr. McGregor, “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.” Mr. McGregor did not answer the question and instead said, “I can get you significant help for your campaign<sup>7</sup> not from me, from people that I have a great working relationship with, business type people.” *Id.* When Mr. Mask’s initial attempt to get Mr. McGregor to name a price failed, Mr. Mask tried it a different way, suggesting 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.*

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<sup>7</sup>Note that Mr. McGregor said he would get “help for your campaign,” he did not say campaign contributions.

Subsequently, Mr. Mask advised Mr. McGregor he was having a fundraiser in Tallassee that night and asked if “any of your folks [inaudible] going to attend with a campaign contribution tonight?” *Id.* at pg. 19. Mr. McGregor said “this is the first I’ve heard of it.” *Id.* at pg 20.

Mr. McGregor did not agree to participate in the fundraiser and did not agree to make any contribution to Mr. Mask. In addition, during the entire conversation, Mr. Mask never agreed to vote for any gaming bill and Mr. McGregor never offered him anything of value to do so. Indeed, any fair reading of the transcript of this conversation results in only one conclusion. Mr. McGregor wanted to talk about the merits of the legislation; Mr. Mask was soliciting a campaign contribution from Mr. McGregor. Mr. McGregor did not offer a campaign contribution to Mr. Mask in exchange for his vote.

Following the call between Mr. Mask and Mr. McGregor, a 53-second phone call was placed from Mr. McGregor’s phone number to the FGA office number. The evidence does not disclose what was said or who took the call.

Defendant Geddie and another lobbyist in his firm attended Mr. Mask’s fundraiser. According to Mr. Mask, they handed an envelope to Ms. Moore and she handed it to Mr. Mask. Mr. Mask said he did not look in the envelope, but instead put it in his left pocket. When Mr. Mask opened the envelope later that night at his home, he found two checks from Fine/Geddie PACs.<sup>8</sup>

In contrast, Ms. Moore said two men came into the fundraiser that night and handed her an envelope. After Ms. Moore sat the two men at a table, she looked in the envelope and saw two checks for \$2500. Ms. Moore told Mr. Mask about these checks that came in and his response was

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<sup>8</sup>Mr. Mask also acknowledged he received two checks from Fine/Geddie PACs during his campaign in 2006 and received an additional contribution from those PACs later in 2010.

to “put it up,” so she put the checks in the cash register. Mr. Mask did not put the checks in his pocket. Instead, Ms. Moore said she gave the envelope with the checks to Mr. Mask after the fundraiser. There was no discussion between Defendant Geddie and Mr. Mask concerning any legislation.

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.*

It is important to point out that Mr. McGregor only confirmed Defendant Geddie went to the fundraiser to “represent me.” Mr. McGregor **did not say** he told Defendant Geddie to deliver any campaign contributions to Mr. Mask on his behalf and his further statement that “he did it,” only infers that 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.

Mr. Mask testified he had no conversation about any legislation with Mr. Geddie at the fundraiser that night. In fact, Mr. Mask testified he has never spoken to Defendant Geddie about any gaming bill. Therefore, the evidence conclusively establishes there could be no explicit *quid pro quo* between Mr. Mask and Defendant Geddie either at the time Mr. Geddie delivered the two PAC checks to the fundraiser, or at any other time.

Mr. Mask is a PAC manager himself. He admitted that one way he could find out the source of a campaign contribution was by simply asking the PAC manager(s), i.e. Mr. Geddie or Mr. Fine.

This he did not do even though Mr. Mask “bumped into” Defendant Geddie at the State House the next day. Mr. Mask remembers Defendant Geddie saying something when he saw him at the State House, but he does not remember what Defendant Geddie said. This was at a time when Mr. Mask was fully cooperating with the Government and had a tape recorder he could have used to record this conversation, but he failed to do so. As a result, there is no evidence in the record concerning what was said during that conversation. Thereafter, despite the passage of two and a half months between his fundraiser and the investigation becoming public, Mr. Mask never talked to Defendant Geddie or tried to record any conversation with Defendant Geddie in order to find out the source of the campaign contributions.

The Government may also rely upon an intercepted telephone call between Mr. McGregor and Defendant Geddie on March 31, 2010, that may bear on the sufficiency of the evidence. During that conversation, Mr. McGregor discussed another phone call he had with Robert Lambert, in which Mr. Lambert told Mr. McGregor about Mr. Mask’s efforts to continue to solicit support from Mr. McGregor. During the phone call with Defendant Geddie, Mr. McGregor said he told Mr. Lambert to tell Mr. Mask, “tell him hell, we’ve already helped.” J-169 at pg. 2. When put in context, it is obvious Mr. McGregor, in referring to “we’ve” in this intercepted phone call was referencing Mr. McGregor and Mr. Lambert – not Defendant Geddie. This understanding was confirmed by Agent McEarchern, who testified the “we’ve” referenced Mr. McGregor and Mr. Lambert.

In summary, there is absolutely no evidence Defendant Geddie ever discussed either campaign contributions or Mr. Mask’s vote on SB 380 with Mr. Mask. Defendant Geddie never offered a bribe to Mr. Mask, either on his own behalf or on behalf of Mr. McGregor. Should the Court construe the Mask-McGregor conversations to establish a bribe, there is not a shred of

evidence to establish Defendant Geddie's knowledge of that fact or any intent by Defendant Geddie to facilitate it. The evidence merely establishes that Defendant Geddie is a lobbyist who innocently took a campaign contribution to a political fundraiser. Accordingly, this Court should enter a judgment of acquittal as to Defendant Geddie on Count 3.

**III. Count 39 – Obstruction of Justice.**

Count 39 of the Indictment charges that Defendant Geddie obstructed a grand jury investigation in that:

[D]efendant GEDDIE instructed an employee to alter a contribution ledger to reflect that two contributions, totaling \$5,000, made by GEDDIE and another employee to [Barry Mask] were not made on behalf of MCGREGOR as GEDDIE initially had indicated, but instead were made on behalf of two other clients, when in fact GEDDIE knew that the contributions were made on behalf of and at the direction of MCGREGOR and that the two other clients had no knowledge of and did not authorize such contributions; and GEDDIE caused to be produced to law enforcement officials, in response to multiple grand jury subpoenas, originals as well as copies of the altered contribution ledgers.

There is no evidence Defendant Geddie attempted to obstruct justice. To the contrary, there was no "alteration" of the ledger, rather the undisputed evidence established that a clerical error was made in the ledger which was corrected within a day or two of the mistake being discovered. This was well before the investigation became public or any grand jury subpoena was issued. The Government failed to establish any nexus between the correction of the ledger and the subsequent investigation.

Cheryl Farrow was the Government's witness on this Count. Ms. Farrow is FGA's office manager, with various duties including bookkeeping, ordering supplies, and maintaining the records for eleven PACs that are managed by Joe Fine and Defendant Geddie. In that capacity, she is

responsible for accounting for all receipts and disbursements (checks) from all of the PACs and completing all required PAC disclosures to be filed with governmental authorities.

Ms. Farrow appeared before the grand jury as a custodian of the records for FGA. During her grand jury appearances, she produced a handwritten ledger she maintained that was set up to track campaign contributions made to political candidates by Fine/Geddie managed PACs. The ledger was introduced into evidence.<sup>9</sup> This ledger is an internal FGA document that attributes campaign contributions to individual FGA clients. It is not required by law to be kept and is not filed or otherwise used to make any required state or federal disclosures or reports. PAC laws do not require a PAC to attribute any campaign contribution to any person who contributed to a PAC. The evidence confirmed that, once someone makes a contribution to a PAC, the person making the contribution loses control over the funds contributed.

Ms. Farrow described the procedure used when one of the Fine/Geddie managed PACs made a campaign contribution to a political candidate. Ms. Farrow said Mr. Fine or Defendant Geddie would tell her to write a check for a campaign contribution, which PAC bank account to write the check from, and which client's ledger to debit so she could enter the information on her handwritten ledger.

Ms. Farrow identified the two checks that were written to the Barry Mask campaign [GX 1210], and confirmed one check was written on MAXPAC and the other on TELPAC, two of the Fine/Geddie-managed PACs. Ms. Farrow said the ledger indicates Defendant Geddie told her to

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<sup>9</sup>GX 1049A consists of the pages of the ledger for three FGA clients: Mr. McGregor, Great Southern Wood, and Protective Life. During Ms. Farrow's testimony, the defense offered the remaining pages of the ledger as GX 1049B. In addition, another ledger maintained by FGA that tracked Mr. McGregor's campaign contributions through various PAC managers was introduced by the defense as GX 1049C and Geddie Exhibit 2905.

write the two checks. Ms. Farrow originally entered the two PAC checks on Mr. McGregor's handwritten ledger. The ledger reflects an entry on 2/15/10 to that effect, but Ms. Farrow testified, "I'm not sure why I put it on the McGregor ledger." Ms. Farrow testified she does not remember the conversation or what instructions were given to her that may have led up to the checks being attributed to Mr. McGregor's ledger.

Although this entry on the McGregor ledger was crossed out, underlying the cross out, the entry is plainly visible, confirming that two checks were written on 2-15-10 to Barry Mask from MAXPAC and TELPAC, including the check number, and that "Bob" authorized the checks to be issued. Because the entries on the McGregor ledger were crossed out and not obliterated, it is obvious there was no effort to hide the fact the entries were originally attributed to the McGregor ledger.

Ms. Farrow testified she crossed out the entry on the McGregor ledger "because I entered it on the wrong [client's] sheet" and she had "no personal knowledge if the money was to come from Mr. McGregor, or not." Ms. Farrow said she changed the entry because Defendant Geddie told her to based upon the fact she wrote "Bob error" next to the cross out, but she does not remember the conversation where Defendant Geddie spoke to her about changing this entry.

After crossing out the entry on the McGregor ledger, Ms. Farrow then entered the two checks on the ledgers of two other FGA clients, Great Southern Wood and Protective Life. The Great Southern Wood ledger entry reflects a February 15, 2010, campaign contribution to Barry Mask from TELPAC in the amount of \$2500. The Protective Life ledger reflects a February 15, 2010, campaign contribution from MAXPAC to Barry Mask in the amount of \$2500. When asked why she made

these entries, Ms. Farrow said they were originally entered on the wrong account, so she put them on the right ones.

All of the entries in these ledgers are sequential. For example, after the February 15 entries were crossed out on the McGregor ledger, the next entry is dated February 18, 2010. The Great Southern Wood ledger reflects the Barry Mask contribution being made on February 15, 2010, and because it is at the bottom of the page, there is a balance brought forward, also dated February 15, 2010, on the following page. The next entry is dated February 18, 2010. The Protective Life ledger is similar, with the next entry being dated February 22, 2010. Ms. Farrow confirmed she made all of the entries on these ledgers and that she did so on or about the date reflected in the ledger. Each entry in the ledger was made prior to the next entry in the ledger. Thus, as to Great Southern Wood, the latest she would have made the entry for the Barry Mask contribution was February 18, 2010, and as to Protective Life, it would have been no later than February 22, 2010.

The investigation in this case was not become public knowledge until the first of April. The first grand jury subpoena was not issued until April 15, 2010, two months after these ledger entries.

Ms. Farrow testified:

- she did not change the ledger in response to the grand jury subpoena;
- the ledger was produced to the grand jury in the same condition as it existed in her office;
- she did not enter into any scheme to turn over false records to the grand jury;
- nobody at FGA ever told her to falsify any document;
- Defendant Geddie knew she was producing the ledger to the grand jury, but did not discuss it with her.

The Government offered no evidence Defendant Geddie attempted to obstruct justice and no evidence of any nexus between the correction of this ledger and the grand jury investigation. The undisputed testimony established this was a clerical error and that the ledger was corrected well before the grand jury investigation became known. Under these circumstances, it is inconceivable Defendant Geddie could be prosecuted for obstruction of justice. When the grand jury subpoena was issued, FGA had no choice but to produce the ledger in the condition in which it existed at the time of the subpoena. FGA complied with the subpoena. Here, there simply was no evidence Defendant Geddie caused the ledger to be altered to obstruct justice. To the contrary, the ledger was produced to the grand jury as it was kept and maintained in the normal course of business.

**IV. Count 1 – Conspiracy.**

Count 1 of the Indictment charges Defendant Geddie with conspiracy to commit federal programs bribery contrary to 18 U.S.C. § 371 and 18 U.S.C. § 666(a)(2). The Government has failed to establish the essential elements of this offense as to Defendant Geddie. In particular, and without waiving any other grounds, the Government failed to prove Defendant Geddie: 1) knew of the unlawful purpose of the plan; and 2) willfully joined in it. *See Eleventh Circuit Pattern Jury Instructions (Criminal Cases) (2010)*, § 13.1 at pgs. 147-148.

Defendant Geddie addressed the sufficiency of the evidence as to the conspiracy count in his Response [Doc. 1522] to the United States' Submission to the Court Regarding the Sufficiency of the Evidence as to Count I of the Indictment. Defendant Geddie adopts that argument here; however, for purposes of the *James* hearing, the Court was only required to make a determination that Defendant Geddie was a member of the conspiracy by a preponderance of the evidence. At this stage of the proceedings, the Government's burden is much higher. Now the Government's evidence

must establish there is “substantial evidence from which a jury could reasonably find the defendant[] guilty beyond a reasonable doubt,” on the conspiracy count. *United States v. Gregory*, 730 F.2d at 706.

While the Government offered considerable evidence that Gilley, Massey, and Pouncy entered into a conspiracy to bribe numerous public officials, the evidence is clear Defendant Geddie was not involved in their activities, nor is there any evidence he knew what they were doing. Indeed, these witnesses, to the extent they had knowledge of Defendant Geddie, only had high praise for him and confirmed he is a highly respected lobbyist. None of them testified he was involved in any illegal conduct, or that he had knowledge of their own illegal activities.

The Government also offered evidence from Senator Beason and former Representative Lewis concerning the Gilley Team’s attempt to bribe them, but there is no evidence Defendant Geddie was involved in any way, or that he had knowledge of the attempted bribes. In this regard, it is important to note there is **no evidence Defendant Geddie knew** Mr. McGregor met with Mr. Gilley, Mr. Massey, and Senator Beason in what the Government alleges was a vote-buying attempt **and** no evidence Defendant Geddie knew Mr. McGregor had loaned money to Mr. Gilley or knew that Mr. McGregor had an interest in Country Crossings. None of the phone conversations involving Defendant Geddie establish any knowledge of the illegal activities of Gilley, Massey, or Pouncy, or that Mr. McGregor was meeting with them.

The Barry Mask allegations have been discussed above and that evidence clearly does not establish Defendant Geddie’s knowing and willful participation in a conspiracy. Even if Mr. McGregor is found to be a member of a conspiracy, that does not mean Defendant Geddie was involved. The following Pattern Jury Instruction applies with particular force in assessing Defendant

Geddie's liability for the Barry Mask allegations: "A person who doesn't know about a conspiracy but happens to act in a way that advances some purpose of one doesn't automatically become a conspirator." *Id.*

Mr. McGregor is a client of Defendant Geddie's lobbying firm and Defendant Geddie lobbied on behalf of Mr. McGregor, seeking passage of SB 380. Defendant Geddie is a PAC manager, who along with his partner Joe Fine, managed eleven (11) political action committees. The receipts and disbursements from those PACs were reported to governmental authorities as required by law. Mr. McGregor contributed to one of the Fine/Geddie managed PACs, as well as to approximately fifty other PACs managed by other PAC managers. All of those contributions fully complied with the law. In addition, a PAC manager ledger [GX 1049C] was kept by FGA in which the funds Mr. McGregor contributed to all of the PACs were tracked. Even campaign contributions resulting from PAC to PAC transfers were attributed to Mr. McGregor in this ledger. Notably absent from this ledger is any evidence Mr. McGregor made a contribution to Barry Mask's campaign.

The other evidence in the case not previously discussed includes five intercepted phone calls between Defendant Geddie and Mr. McGregor, specifically J-113, J-140, J-151, and J-169. The Court must consider those conversations in the context in which they occurred. The phone calls are directed toward legal lobbying efforts and are conversations that one would expect to occur between a lobbyist and his client during the heat of a legislative battle. These discussions included: the merits of SB 380 and selling points to be used when discussing it; why a particular senator/representative would not commit to vote for the bill; how and who should approach a particular senator/representative to try to secure a commitment; and the status of the bill as it was being redrafted during the legislative process. Importantly, there was no discussion concerning bribing

anyone or buying anyone's vote either with money or a campaign contribution, nor was any other illegal activity discussed.

Apparently the Government played J-151 for the purpose of showing Mr. McGregor asked Defendant Geddie if he was on a "safe phone." Again, it is important to put that comment into context because it clearly did not relate to an attempt to hide conspiratorial activity. Instead, the topic being discussed was whether there were enough votes to pass SB 380. When asked if he was on a safe phone, Defendant Geddie started laughing and said, "I hope so. If I'm not, I'm in (laughs) trouble." This was clearly not a serious attempt to hide some conspiratorial activity. The Court heard the tape of the call and while Mr. McGregor expressed some concern about discussing the vote count on the phone, it is clear Defendant Geddie took Mr. McGregor's question as a joke.

The other topic that came up in some of these intercepted phone calls relates to the contributions Mr. McGregor made to the fifty-two PACs. In this regard, there is discussion in a couple of the calls concerning "moving" it around, which is nothing more than making PAC to PAC transfers which the Government has conceded were legal. At no time did Defendant Geddie discuss with Mr. McGregor any illegal conduct in connection with the PAC to PAC transfers.

The phone calls between Mr. McGregor and Defendant Geddie referred to many of the people who are involved in this case, including Mr. Coker, Mr. Prueitt, Ms. Smith, Mr. Crosby, Mr. Gilley, Senator Beason, Representative Lewis, and others; but there was never any discussion of bribery or any other illegal activity. Surely, out of the thousands of intercepted phone calls the Government has in this case, there would be one phone call where Defendant Geddie is clearly implicated in a bribery attempt, but none exists because he was not involved and did not agree with any other person to bribe anyone. Again, the Pattern Jury Instructions are particularly compelling:

“But simply being present at the scene of an event or merely associating with certain people and discussing common goals and interests doesn’t establish proof of a conspiracy.” *Id.* Here, while the Government has proven Defendant Geddie associated with other defendants and discussed common goals and interests, there is no evidence Defendant Geddie knowingly and willfully entered into the conspiracy.

**V. Counts 23-33 – Honest Services Mail & Wire Fraud.**

Counts 23-33 of the Indictment charge Defendant Geddie with numerous counts of honest services mail and wire fraud. Defendant Geddie was not involved in the underlying circumstances surrounding these allegations, nor is there evidence he had knowledge of any of them. Four of the five mail fraud counts are directed to the mailing of four checks to Mr. Crosby by Macon County Greyhound Park, Inc.<sup>10</sup> One mail fraud count is directed to the mailing of checks by the Gilley Team to PACs that are not associated with Defendant Geddie and that he had no knowledge of the transaction. Five of the six wire fraud counts relate to phone calls made by Mr. McGregor to persons other than Defendant Geddie and one count involves a phone call between Ms. Smith and Mr. Gilley. Defendant Geddie was not a party to any of those calls.

In order to survive a motion for judgment of acquittal on the honest services fraud counts, the Government must present evidence Defendant Geddie had the specific intent to defraud and involved himself in the scheme to defraud alleged in the Indictment. This the Government failed to do. The Indictment alleges the “scheme to defraud” was committed “through bribery and concealment of material information.” Indictment at ¶ 234. Thus, the Government was required to

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<sup>10</sup>There is no evidence Defendant Geddie knew Mr. McGregor was paying Mr. Crosby \$3,000 per month.

prove Defendant Geddie was involved in a scheme to defraud that involved both: 1) bribery;<sup>11</sup> **and** 2) concealment of material information. As argued above, Defendant Geddie did not bribe anyone and he did not enter into a conspiracy to bribe anyone.<sup>12</sup> Should the Court nevertheless find otherwise, the Government still has not established the second prong, i.e. that Defendant Geddie concealed material information.

The Government has taken the position that the “concealment” in this case consisted, *inter alia*, of PAC to PAC transfers and the FGA Ledgers. The evidence has clearly established, and the Government conceded, that PAC to PAC transfers are legal and routine in Alabama campaign financing. The Government has not established that any PAC to PAC transfer in which Defendant Geddie was involved constituted a bribe or was illegal.<sup>13</sup> In so far as the FGA Ledgers are concerned, those ledgers are internal documents that are not required by law to be maintained, so even if they were used to conceal something, the concealment would not be material.

Even so, the Government’s forensic accountant testified these ledgers made his job easier and allowed tracking of all the funds involved in this case. According to the uncontraverted evidence, the ledgers were tools of disclosure, not concealment. FGA turned the ledgers over to the grand jury and created transparency to the transactions relevant to this case. This is the opposite of concealment

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<sup>11</sup>There remains a legal issue concerning whether the honest services statute applies to campaign contributions since they are not part of the pre-*McNally* core.

<sup>12</sup>None of the mailings or phone calls involve the Barry Mask allegations. In fact, other than counts 23 and 24 which relate to checks mailed to Mr. Crosby, all of the other honest services fraud counts concern events subsequent to February 15, the date of the alleged bribe of Mr. Mask.

<sup>13</sup>Although the “Gilley Team” made PAC to PAC transfers for purposes of facilitating a bribe, there is no evidence Defendant Geddie was involved or had knowledge of those PAC to PAC transfers.

because these ledgers have been relied upon by the Government as a clear roadmap to attribute campaign contributions to FGA clients, including Mr. McGregor. Thus, the Government failed to prove any “concealment of material information” on the part of Defendant Geddie that would establish his involvement in a scheme to defraud. Because the Government failed to establish any evidence that Defendant Geddie had the specific intent to defraud as alleged in the Indictment these counts must be dismissed.

**VI. Conclusion.**

For the reasons set forth in this motion, the Court should enter a judgment of acquittal as to Defendant Geddie on all counts of the Indictment.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 26, 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

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