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

UNITED STATES OF AMERICA	)	
	)	
v.	)	CR. NO. 2:10cr186-MHT
	)	
QUINTON T. ROSS, JR.	)	

UNITED STATES' RESPONSE TO DEFENDANT ROSS'S MOTION TO STRIKE

The United States of America, through undersigned counsel, hereby responds to defendant Ross's motion to strike argument from the government's previously filed briefs regarding the applicability of a quid-pro-quo standard under 18 U.S.C. § 666. Dkt. No. 980.[1] The crux of defendant Ross's argument is that the government's position with respect to United States v. McNair, 605 F.3d 1152 (11th Cir. 2010), in this matter must comport with that taken by the Solicitor General before the Supreme Court, as outlined in its opposition to McNair's (and his co-defendants') petitions for a writ of certiorari. Brief for the United States in Opposition, McNair v. United States, Nos. 10-516, 10-528, 10-533, 2011 WL 767565 (Feb. 4, 2011). The government agrees.

The prosecution recognizes that it is bound to follow the lead of the Office of the Solicitor General. Indeed, when the United States filed its pretrial responses addressing McNair's § 666 analysis on February 14, 2011, the prosecution was unaware of the Solicitor General's opposition to McNair's petition for a writ of certiorari, which it filed just ten days earlier. Although the government asserted in this matter that McNair requires no quid pro quo, a more precise

[1] Defendant Ross adopts the argument made by defendant Gilley, Dkt. No. 956, who pleaded guilty for his role in the conspiracy on April 22, 2011. On April 25, 2011, the Court dismissed Gilley's motion as moot, along with various other pending motions filed on his behalf. At the time of this filing, no other defendant has joined defendant Ross in asserting Gilley's former position.

characterization, as laid out in the Solicitor General's opposition, is that McNair holds that prosecutions under § 666 need not establish a specific quid pro quo. This much is clear from the language in McNair that the government quoted in its various briefings regarding the applicability of McCormick v. United States, 500 U.S. 257 (1991), outside the Hobbs Act. McNair, 605 F.3d at 1188 ("The requirement of a "corrupt" intent in § 666 does narrow the conduct that violates § 666 but does not impose a specific quid pro quo requirement."); id. ("[W]e now expressly hold there is no requirement in § 666(a)(1)(B) or (a)(2) that the government allege or prove an intent that a specific payment was solicited, received, or given in exchange for a specific official act, termed a quid pro quo."). In other words, in this Circuit a § 666 prosecution does not require a link between a specific thing of value and a specific official act.[2]

Harmonizing the prosecution's stated reading of McNair with that of the Solicitor General does the defendants no good, however. McNair did not construe the bounds of McCormick, and it was not a campaign-contribution case. It stands merely for the proposition that the Eleventh Circuit does not require in every case proof of a link to a specific official action to sustain a conviction for federal program bribery. It certainly does not stand for the proposition that McCormick mandates an express—i.e., verbally stated—exchange, as defendant Ross has urged.

More importantly, as the government has argued repeatedly, even if the Eleventh Circuit did require in the § 666 context proof of an explicit quid pro quo under McCormick, at least as far as campaign contributions are involved, that standard is met here. The government sufficiently has

[2] To the extent defendant Ross adopts Gilley's argument that the government "prevailed" on its reading of McNair before the Supreme Court, Dkt. No. 956 at 3, that is not true. The Supreme Court merely denied McNair's certiorari petition, without issuing any binding precedent regarding its view on the underlying opinion and the application of a quid-pro-quo requirement under § 666.

alleged an explicit agreement to exchange benefits (campaign contributions) for specific official action (votes in favor of pro-gambling legislation). Thus, the exact contours of McNair are beside the point, since the Indictment provides more than the case mandates in the form of a specific quid pro quo. As the government has articulated elsewhere—in response to the various motions to dismiss and motions for bills of particulars premised on the applicability of McCormick—the allegations establishing such an agreement as to each of the remaining defendants are manifest throughout the Indictment. No reading of McNair changes the facial validity of the Indictment. As such, defendant Ross's argument is a red herring.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on counsel of record through the Court's electronic filing system this 26th day of April, 2011.

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