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
	)	
ROBERT B. GEDDIE, JR.	)	

UNITED STATES' OPPOSITION TO DEFENDANT GEDDIE'S MOTION TO DISMISS OR IN THE ALTERNATIVE FOR A BILL OF PARTICULARS

The United States of America, through undersigned counsel, hereby opposes defendant Geddie's motion to dismiss Counts 3 and 23 through 33, charging him with committing federal program bribery and honest services mail and wire fraud. Dkt. No. 460.[1] Because the Indictment provides ample detail concerning the offenses with which he is charged, the Court should deny defendant Geddie's motion.

ARGUMENT

Defendant Geddie argues at length that the Indictment is insufficient because it fails to allege an explicit quid pro quo in connection with the federal program bribery and honest services fraud charges. Mot. at 2-11. Relying on the Supreme Court's decision in McCormick v. United States, 500 U.S. 257 (1991), he asserts the proposition that the Indictment must allege an explicit quid pro quo evidencing an exchange of official action for personal benefit to establish an offense under § 666 and § 1346. Notwithstanding his misreading of the applicable law, the Indictment sufficiently alleges a crime under each statute, such that the liberal pleading standard for criminal charging

[1] Although defendant Geddie styles his motion as only addressing the honest services counts, he also argues that the federal program bribery charge, Count 3, should be dismissed as well. Mot. at 2.

documents is satisfied.

"An indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense." Hamling v. United States, 418 U.S. 87, 117 (1974); United States v. Woodruff, 296 F.3d 1041, 1046 (11th Cir. 2002). The government need not allege its theory of the case or list its supporting evidence. See United States v. Musacchio, 968 F.2d 782, 787 (9th Cir. 2001). "When analyzing challenges to the sufficiency of an indictment, courts give the indictment a common sense construction." United States v. Poirier, 321 F.3d 1024, 1029 (11th Cir. 2003). "Linguistic precision is not required." United States v. deVegter, 198 F.3d 1324, 1330 (11th Cir. 1999); United States v. Alber, 56 F.3d 1106, 1111 (9th Cir. 1995); see also 1 Charles A. Wright et al., Federal Practice and Procedure § 125, at 388 (1982) (noting that an indictment is not defective "simply because it might have been made more certain").

Indeed, "[w]hile detailed allegations might well have been required under common-law pleading rules, they surely are not contemplated by Rule 7(c)(1), which provides that an indictment 'shall be a plain, concise, and definite written statement of the essential facts constituting the offense charge.'" United States v. Resendiz-Ponce, 549 U.S. 102, 110 (2007) (citation omitted).

It is beyond question that Counts 3 and 23 through 33 track the appropriate statutory elements of federal program bribery and honest services mail and wire fraud, respectively. Compare Indict. ¶ 194, with 18 U.S.C. § 666(a)(2); and Indict. ¶¶ 234-236, with 18 U.S.C. §§ 1341, 1343, 1346. Moreover, rather than simply "parroting the language" of the statute, Resendiz-Ponce, 549 U.S. at 109, each charge specifies both the time period of the offense, Indict. ¶ 194 ("on or about February

15, 2010"), ¶ 234 ("in or about February 2009 through in or about August 2010"), as well as the conduct at issue and the individuals defendant Geddie attempted to bribe. See, e.g, id. ¶ 194 ("GEDDIE, at the direction of MCGREGOR, did give $5,000 to Legislator 3, a member of the Alabama House of Representatives, being an agent of the State of Alabama, which received benefits in excess of $10,000 in the one-year period from May 1, 2009, to April 30, 2010, from federal programs involving a grant, contract, subsidy, loan, guarantee, insurance and other forms of federal assistance, to influence and reward Legislator 3 in connection with an upcoming vote on pro-gambling legislation.").

Although the charging language "fairly informs" defendant Geddie of his alleged conduct, Hamling, 418 U.S. at 117, Counts 3 and 23 through 33 also expressly incorporate at least[2] 178 overt acts alleged in Count 1, the conspiracy count, in each substantive count in which he is charged. This level of detail clearly goes beyond that which Rule 7 requires. Fed. R. Crim. P 7(c)(1) ("A count may incorporate by reference an allegation made in another count.").

Of the 178 incorporated allegations, numerous pertain directly to defendant Geddie. These allegations make clear that on February 15, 2010, at the direction of defendant McGregor, he delivered to Legislator 3 a check in the amount of $5,000—the same day that defendant McGregor solicited Legislator 3's vote on pro-gambling legislation. Indict. ¶¶ 68-70. The following day defendant McGregor confirmed that he told defendant Geddie "what I wanted him to do and, uh, and he did it." Id. ¶ 71. The Indictment further alleges that defendant Geddie instructed an employee to alter company records to reflect that clients other than defendant McGregor were the source of the

[2] The federal program bribery counts incorporate 178 overt acts, and the honest services fraud counts incorporate 188, including the purposes and manner and means of the conspiracy.

campaign contribution payment to Legislator 3. Id. ¶ 72. These allegations, coupled with the charging language in Counts 3 and 23 through 33, which tracks the statutes, satisfy Hamling and establish the Indictment's facial sufficiency.

Nevertheless, defendant Geddie argues that the Indictment insufficiently pleads the explicit quid pro quo requirement for campaign-contribution-based extortion under color of official right announced in McCormick v. United States, 500 U.S. 257, 273 (1991). Id. (holding that receipt of campaign contributions is "vulnerable under the Act as having been taken under color of official right, . . . only if the payments are made in return for an explicit promise or undertaking by the official to perform or not perform an official act"); see also Evans v. United States, 504 U.S. 255, 268 (1992) (approving jury instruction in campaign-contribution Hobbs Act case and holding, pursuant to McCormick, that "the Government need only show that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts").

Defendant Geddie's argument fails for several reasons. As an initial matter, he is not charged with a Hobbs Act violation for extortion under color of official right, see 18 U.S.C. § 1951(a), which applies only to public officials. There is no controlling case law holding that such a requirement—for campaign-contribution or non-campaign-contribution cases—applies outside the Hobbs Act. Indeed, Evans makes clear that the Hobbs Act's quid pro quo requirement derives from the common-law history and understanding of that particular statute. 504 U.S. at 268 ("[O]ur construction of the statute is informed by the common-law tradition from which the term of art was drawn and understood. We hold today that the Government need only show that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for

official acts."). In support of his argument that McCormick applies outside the Hobbs Act, defendant Geddie cites dicta from United States v. Allen, 10 F.3d 405, 411 (7th Cir. 1993), which involved neither § 666 nor § 1346. Mot. at 7. Similarly, United States v. Kemp, 500 F.3d 257, 281 (3d Cir. 2007), did not involve application of the McCormick doctrine in the honest services context, as defendant Geddie intimates. Mot. at 7.

Moreover, recently the Eleventh Circuit has concluded that a quid pro quo is not required to prove a violation of § 666. United States v. McNair, 605 F.3d 1152, 1188 (11th Cir. 2010) ("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."). Nowhere did the McNair court suggest that the standard would be any different depending on the particular thing of value exchanged. And at least one court in the Eleventh Circuit has refused to import a quid pro quo requirement into the honest services doctrine. United States v. Nelson, 2010 WL 4639236, at *2 (M.D. Fla. Nov. 8, 2010) (examining the Supreme Court's decision in Skilling v. United States, 130 S. Ct. 2896 (2010), and finding that "the Court is not prepared to find that an honest services mail fraud charge alleging a bribery scheme requires identifying a quid pro quo as an element of the offense").

For the sake of argument, however, assuming that the McCormick/Evans requirement of an explicit quid pro were applicable to campaign-contribution-based prosecutions for federal program

bribery and honest services fraud,[3] such an exchange is sufficiently pled with respect to defendant Geddie. He is not entitled to have the document read in a way that makes most sense to him, and there is no mandate that the charging document include the Latin phrase quid pro quo.[4] See United States v. Seminerio, 2010 WL 3341887, at *6 (S.D.N.Y. Aug. 20, 2010) ("[T]he Indictment need not utter the 'magic words' 'quid pro quo' or even 'bribe' or 'bribe receiving' or 'kickbacks'—so long as a jury could find that Seminerio understood what was expected as a result of the payments to exercise particular kinds of influence as opportunities arose."); see also United States v. Giles, 246 F.3d 966, 973 (7th Cir. 2001) (upholding bribery instruction in a Hobbs Act extortion despite that "the magic words quid pro quo were not uttered [in a challenged charge]"). This is especially true where a required element is implicit in the statutory text. United States v. Aliperti, 867 F. Supp. 142, 145 (E.D.N.Y. 1994) ("[T]he requirement of a quid pro quo, rather than amounting to an additional element unspecified in the [Hobbs Act], is encompassed within the language of the statute itself."); United States v. Malone, 2006 WL 2583293, at *2 (D. Nev. Sept. 6, 2006) ("Although it is necessary to show quid pro quo where it is alleged that a campaign contribution is part of the illegal conduct, . . . a criminal indictment does not need to specifically allege quid pro quo."); see also Resendiz-

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[3] The Eleventh Circuit in United States v. Siegelman did not reach the question of whether an explicit quid pro quo instruction was warranted in the § 666 context because the district court actually gave an instruction that was even more stringent than the one approved of in Evans. United States v. Siegelman, 561 F.3d 1215, 1225-27 (11th Cir. 2009) (per curiam), vacated and remanded on other grounds, Siegelman v. United States,130 S. Ct. 3542 (2010).

[4] Nevertheless, paragraph 35 of the Indictment, which is incorporated in the honest services charges, spells out the quid pro quo quite clearly: "It was a further part of the conspiracy that ROSS, MEANS, SMITH, and PREUITT would and did solicit and demand payments and campaign contributions from MCGREGOR and GILLEY and the lobbyists and other individuals working for them, including GEDDIE, COKER, MASSEY, WALKER, and Lobbyist A, in return for their votes and support for pro-gambling legislation." Indict. ¶ 35 (emphasis added).

Ponce, 549 U.S. at 107 (holding that "indictment at bar implicitly alleged that the respondent engaged in the necessary overt act simply by alleging that he 'attempted to enter the United States.'" (emphasis added)).

As noted, the Indictment establishes with sufficient detail defendant Geddie and defendant McGregor's corrupt exchange of campaign contributions for Legislator 3's vote, as well as defendant Geddie's efforts to conceal defendant McGregor's connection to the payment. Indict. ¶¶ 68-73. Defendant Geddie's efforts simply to challenge the government's evidence is misplaced. If he wishes to challenge the sufficiency of the government's evidence at trial, he may do so through arguments to the jury, cross-examination of government witnesses, and a Rule 29 motion. That sufficiency argument is wholly separate from the simple inquiry of whether the Indictment puts him on adequate notice to defend his conduct. Cf. United States v. Russell, 639 F. Supp. 2d 220, 235 (D. Conn. 2007) ("Not only does Russell misread the factual allegations in the indictment, his argument as to what must be pleaded in an indictment . . . is wrong in that it conflates permissible claims based on sufficiency of the government's allegations with impermissible claims based on the sufficiency of the government's evidence." (emphasis added)). Similarly, the government is under no obligation to allege in an indictment its theory of intent. United States v. Agostino, 132 F.3d 1183, 1190-91 (7th Cir. 1997).[5]

Under Rule 7(c)(1) and applicable case law construing the requirements of an indictment,

[5] Likewise, the government is under no obligation to disclose in a charging document its particular legal theories, United States v. Burgin, 621 F.2d 1352, 1359 (5th Cir. 1980), including its theory as to aiding and abetting liability, which need not be alleged at all. United States v. Martin, 747 F.2d 1404, 1407 (11th Cir.1984) (stating that "[a]iding and abetting need not be specifically alleged in the indictment; assuming the evidence supports it, the accused can be convicted of aiding and abetting so long as the jury is instructed on it").

a common sense review of the charging document here reveals that the grand jury has provided defendant Geddie with more than he is entitled. His constitutional right "is to know the offense with which his is charged, not to know the details of how it will be proved." United States v. Kendall, 665 F.2d 126, 135 (7th Cir. 1981). At this stage of the proceedings, nothing more is required, and the Court need not engage in an analysis of the facts underlying the extortion charges. Costello v. United States, 350 U.S. 359, 363 (1956); United States v. Thomas, 348 F.3d 78, 82 (5th Cir. 2003).[6]

Finally, defendant Geddie also borrows from defendant McGregor's motion challenging the propriety of campaign-contribution-based prosecutions under § 1346. Mot. at 9-11; Dkt. No. 208. The United States has made clear elsewhere that contribution-based honest services prosecutions remain wholly viable following the Supreme Court's decision in Skilling v. United States, 130 S. Ct. 2896 (2010). Dkt. No. 237 at 4-11. Those arguments apply with equal force to defendant Geddie, and the Court should reject his position.

CONCLUSION

For the foregoing reasons, the Court should deny defendant Geddie's motion to dismiss Counts 3 and 23 through 33.

Respectfully submitted,

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[6] As such, defendant Geddie's request for alternative relief in the form of a bill of particulars similarly fails. The Indictment (and discovery) provide him with more than he is entitled to for purposes of preparing a defense.

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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 14th day of February, 2011.

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