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
	)	
RONALD E. GILLEY	)	

UNITED STATES' OPPOSITION TO DEFENDANT GILLEY'S MOTION TO DISMISS COUNT ONE-CONSPIRACY

The United States of America, through undersigned counsel, hereby opposes defendant Gilley's Motion to Dismiss Count One. Dkt. No. 492. Defendant Gilley's motion understates the allegations set forth in the Indictment and fails to properly apply the law. Because both the charging document and the evidence presented at trial will firmly establish a single overarching conspiracy, defendant Gilley's motion should be denied.

I. ARGUMENT

As defendant Gilley correctly notes, a material variance between an indictment and the government's proof at trial occurs if the government proves multiple conspiracies under an indictment alleging only a single conspiracy. United States v. Seher, 562 F.3d 1344, 1364 (11th Cir. 2009). To determine whether a jury can find a single conspiracy, as opposed to multiple conspiracies, three factors must be considered: (1) whether the defendants shared a common goal; (2) the nature of the underlying scheme; and (3) the overlap of participants. United States v. Huff, 609 F.3d 1240, 1243 (11th Cir. 2010). "The existence of separate transactions does not have to imply separate conspiracies if the co-conspirators acted in concert to further a common goal. . . . Each co-conspirator thus does not have to be involved in every part of the conspiracy." Id. (internal

quotation marks omitted). Because the evidence that the government will introduce at trial easily fulfills these requirements, defendant Gilley's claim fails.

Turning to the first element, the Indictment states the defendants' common purpose clearly and succinctly: "the passage of pro-gambling legislation that was favorable to the business interests of MCGREGOR and GILLEY" through illicit means. Indict. ¶¶ 29, 31. To establish this common purpose, the government, at trial, will introduce audio and documentary exhibits as well as testimony including evidence described in over 150 overt acts. Id. ¶¶ 39-190. Even a cursory look at this evidence shows that each and every act establishes the common purpose of the ten remaining defendants. Because courts typically define the "common goal" broadly, this element poses no problem in the current prosecution. See United States v. Edouard, 485 F.3d 1324, 1347-48 (11th Cir. 2007) (finding that three different methods of importing cocaine into the United States fell within the common goal of bringing cocaine into the United States).

Similarly, the allegations set forth in the Indictment, especially the overt acts, establishe unequivocally that there was an underlying scheme. Both gambling operators, defendants Gilley and McGregor, offered campaign contributions and other things of value in return for favorable votes on the pro-gambling legislation. Both worked through lobbyists and intermediaries—defendants Coker, Geddie, and Walker, as well as Jarrod Massey and Jennifer Pouncy (Lobbyist A)—to communicate the illicit offers. Both used these same lobbyists to hide the bribes by funneling money through political action committees and other organizations. Both depended upon defendant Crosby, who was paid $3,000 per month to draft legislation that would protect their business interests. Moreover, the overt acts show, and the evidence will establish, that in connection with defendants Ross, Means, and Preuitt, as well as Legislator 1, they worked their targets simultaneously. See

United States v. Moore, 525 F.3d 1033, 1043 (11th Cir.2008) (underlying scheme established by evidence that correctional officers charged with exchanging sex for contraband with inmates switched assignments to facilitate conduct, engaged in similar conduct with multiple inmates, threatened inmates who may have been in a position to report the conduct, and failed to turn other guards in for engaging in the same behavior).

As to the third prong, defendant Gilley's reliance on the Kotteakos and Chandler line of cases is misplaced. United States v. Chandler, 388 F.3d 796, 807 (11th Cir. 2004) (citing Kotteakos v. United States, 328 U.S. 750, 755 (1946) ("[W]here the 'spokes' of a conspiracy have no knowledge of or connection with any other, dealing independently with the hub conspirator, there is not a single conspiracy, but rather as many conspiracies as there are spokes.")). Far from a collection of unconnected spokes, the Indictment in this case shows, and the evidence presented at trial will establish, a substantial overlap in participants, a strong interdependence among co-conspirators and an immense amount of coordination and communication. For example, defendants Gilley and Walker, as well as Massey and Pouncy, all were involved in offering things of value to defendants Preuitt and Means at the same time defendants McGregor, Coker, and Geddie were doing the same. Defendants McGregor and Gilley, and various lobbyists for both the operators talked about the efforts in numerous conversations. The Indictment clearly shows that defendants Means and Preuitt were working together as "holdout" legislators. More importantly, defendant Coker was coordinating the offers being made by the two operators, traveling to each of the legislators hometowns to communicate the final package, or offer, in person. See Huff, 609 F.3d at 1244 (evidence that defendants were "fishing buddies," were treated by co-conspirator contractor to a hunting trip together, fraudulently used their government credit cards in the same way during the

same period, and visited co-conspirators together sufficient to find overlapping participation and interdependence).

Finally, defendant Gilley's motion must be denied because it is based on total conjecture and, as a result, is premature. No jury has been empaneled in this case and no evidence has been introduced. Yet, it is axiomatic that it is the jury's function to determine the question of fact as to whether the evidence establishes a single conspiracy. United States v. Adams, 1 F.3d 1566, 1584 (11th Cir.1993). In the unlikely event that the government, at the conclusion of all the evidence, has not clearly establish that all defendants participated in a single overarching conspiracy, defendant Gilley may then seek an instruction for multiple conspiracies. See Edouard, 485 F.3d at 1348 ("[I]n determining whether to give an instruction for multiple conspiracies, the district court considers whether there is sufficient evidence for a reasonable jury to conclude that some of the co-conspirators were involved in separate conspiracies unrelated to the overall conspiracy charged in the indictment." (internal quotation marks omitted)). A dismissal at this juncture would deprive the jury of its constitutionally bestowed function.

II. CONCLUSION

Accordingly, defendant Gilley's motion should be denied.

Respectfully submitted,

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Acting Under Authority of 28 U.S.C. § 515

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CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2011, I filed the foregoing using the Court's CM/ECF system, which will provide notice to counsel of record.

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