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
	)	
MILTON E. MCGREGOR	)	
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.	)	
JOSEPH R. CROSBY	)	

UNITED STATES' MEMORANDUM OF LAW REGARDING ADMISSIBILITY OF DEFENDANT PREUITT'S FALSE STATEMENTS

The Government submits this supplemental memorandum of law in answer to objections raised by the defense regarding whether the false statements made by defendant James Preuitt to FBI Special Agent George Glaser are admissible against the other eight defendants. For the reasons that follow, the Government submits that defendant Preuitt's false statements are admissible against all of the defendants, and, as such, the defendants' objections should be overruled.

Rule 801(c) of the Federal Rules of Evidence defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." When a statement is offered for a purpose other than to prove the truth of the matter asserted, it is not hearsay. The Supreme Court has recently reiterated that the Sixth Amendment's Confrontation Clause is not implicated when statements are offered for "purposes other than establishing the truth of the matter asserted." *Michigan v. Bryant*, 131 S.

Ct. 1143, 1161 n.11 (2011) (citing *Crawford v. Washington*, 541 U.S. 36, 60 n.9. (2004)). As such, non-hearsay statements do not run afoul of *Bruton*, a case that arose under the Confrontation Clause. *See White v. Lewis*, 874 F.2d 599, 603 (9th Cir. 1989) ("Because this testimony was not used for the truth of the matter asserted by the out-of-court declarant, it was not hearsay, and *Bruton* is inapposite.").

Defendant Preuitt's false statements are not hearsay evidence—and therefore not subject to a Confrontation Clause analysis under *Bruton* or *Crawford*—because the government is not offering them for the truth of the matter asserted.[1] Specifically, defendant Preuitt told Special Agent Glaser that he was never offered anything of value in exchange for his vote to pass Senate Bill 380, and that he was unaware of private individuals, lobbyists, or legislators being involved in the offer or acceptance of things of value in exchange for votes to pass Senate Bill 380. The government wishes to introduce these statements in order to prove that defendant Preuitt made statements to Special Agent Glaser that he knew to be *false*.

Because defendant Preuitt's statements are not hearsay, the only remaining issue relating to admissibility is whether the statements are relevant. Rule 401 of the Federal Rules of Evidence defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Count 38 of the Indictment charges defendant Preuitt with making false statements in violation of 18 U.S.C. § 1001(a)(2) in connection with the interview conducted by the FBI. Special Agent's Glaser's testimony regarding defendant

[1] As the government has already argued, Dkt. No. 1476, *Bruton* is not implicated unless a defendant's out-of-court statement facially implicates his co-defendants. Because there is no such facial implication here, *Bruton* is not an impediment to the statements' admissibility, notwithstanding the fact that all defendants are charged in a conspiracy count. For the same reason, the use of a *Pinkerton* charge as to any substantive counts does not affect the admissibility of defendant Preuitt's statements because, again, they do not run afoul of *Bruton*.

Preuitt's statements therefore is relevant in determining whether defendant Preuitt has committed a crime. Defendant Preuitt's non-hearsay denials are also relevant evidence against *all* defendants in support of Count 1, the conspiracy charge, because the Indictment alleges that it was a manner and means of the conspiracy for the defendants to lie to law enforcement officers in an effort to conceal their corruption of the legislative process. Indict. ¶ 37; *see also id.* ¶ 116 (overt act describing defendant Preuitt's false statements). In short, the Confrontation Clause is not implicated by the admission of Preuitt's lies against him or any other defendant.

In addition, even if the Court concludes that defendant Preuitt's statements are hearsay, they are admissible under Federal Rule of Evidence 801(d)(2)(E), which provides that a statement is "not hearsay" if the statement "is offered against a party" and is "a statement by a coconspirator of a party during the course and in furtherance of the conspiracy." The Eleventh Circuit "applies a liberal standard in determining whether a statement was in furtherance of a conspiracy." United States v. Siegelman, 640 F.3d 1159, 1181 (11th Cir. 2011) (citing United States v. Santiago, 837 F.2d 1545, 1549 (11th Cir. 1988)). Because defendant Preuitt's efforts to conceal his involvement in the corrupt dealings at issue in this case were designed to further the conspiracy, his statements to that effect, elicited through Special Agent Glaser, are admissible against each defendant as co-conspirator statements.[2]

In light of the Government's recent motion regarding *Bruton* issues arising from Special Agent Glaser's testimony, the Government submits that the Court should issue the following limiting instruction to the jury, tailored, as necessary, upon completion of Special Agent Glaser's testimony:

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[2] Any other relevant statement made by defendant Preuitt and offered for its truth—and therefore not in furtherance of the conspiracy—is admissible against only defendant Preuitt, as a statement of a party-opponent under 801(d)(2)(A), so long as the statement does not facially implicate another defendant in violation of *Bruton*.

You have heard testimony from Special Agent Glaser concerning statements made by defendant Preuitt in an interview with law enforcement officials on April 1, 2010. Specifically, Special Agent Glaser testified that defendant Preuitt denied being offered anything of value in exchange for his vote in favor of SB380 and asserted that he was unaware of private individuals, lobbyists, or legislators being involved in the offer or acceptance of things of value in exchange for votes to pass SB380. You may consider this testimony as to *all* defendants. However, you may consider all other statements attributed to defendant Preuitt by Special Agent Glaser *only* as to defendant Preuitt.

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 July 20, 2011, I filed the foregoing using the Court's CM/ECF system, which will provide notice to counsel of record.

_____/s/_____
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