

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

UNITED STATES OF AMERICA,)
)
v.) **CASE NO. 2:10-cr-186-MHT**
)
THOMAS E. COKER,)
)
Defendant.)

**COKER’S RESPONSE TO THE GOVERNMENT SUBMISSION REGARDING
SUFFICIENCY OF EVIDENCE AS TO COUNT ONE–CONSPIRACY**

The evidence relied on by the Government as to Tom Coker with regard to the conspiracy count (Count One) is contained on pages 8-9 of its submission. In its factual assertion the Government outlines conduct that is entirely and completely legal. It then misstates the facts and takes events out of sequence and out of context in an effort to tie Coker to the alleged conspiracy. The Government’s position is unsupportable, even when the evidence is viewed in a light most favorable to it.

In the first 1 ½ paragraphs the Government asserts that Coker attended pro-gambling meetings, discussed strategy and counted votes in favor SB380. All of these activities were similarly attended and performed by numerous individuals not named in this indictment and are carried out every day in legislatures throughout the country.

These events were entirely proper and legal and even Jarrod Massey testified that such meetings happen every time there are complex matters presented in the Alabama Legislature (he specifically acknowledged it occurring with regard to Tort Reform, Amendment One and other similar issues). Massey also testified that Coker was chosen to be the point person for the lobbying efforts of the pro-gambling side (which included not only McGregor and Gilley but also the Mobile track, Greenetrack, White Hall, Etowah County and other gambling interests) because of their great respect of him, his trust among the legislative community, his abilities, seniority and track record as a lobbyist.

It is crucial to note that other than these strategy meetings and vote counting sessions, Coker's direct involvement in the activities asserted in the Indictment occur in a very narrow window¹: Coker speaks with Sen. Preuitt on March 25th concerning an offer made by Gilley to him for campaign support and agrees to find out what Gilley was talking about²; on March 26th Coker speaks with Massey because he does not want to

¹ There is no allegation in the Indictment or inference in the evidence which has been presented, that Coker had anything to do with Rep. Lewis, Sen. Beason, Rep. Mask or Sen. Smith with regard to the conduct alleged in the indictment. The allegation with regard to Sen. Means is one sentence in Paragraph 81 of the Indictment, indicating that Coker visited Gadsden [Means' hometown] on March 29th, the day before the vote. In its conspiracy filing the Government does not mention Sen. Ross with regard to Coker at all. In its section concerning Sen. Ross, there is a passing reference that Ross sought campaign contributions from Coker but ultimately from McGregor personally. The bulk of the allegations involve Coker's relationship with Preuitt and fall themselves into a narrow window of March 25-30.

² (J-82: P1 L23-24)

interfere with Massey's relationship with his client, Ronnie Gilley³; Massey tells Coker that he will have Gilley call Coker to explain what "real" or "heavily" involved means⁴; that same day (March 26th) Gilley and Coker speak on the phone and Gilley explains that this means providing country music artists to support Preuitt's campaign; and on March 29th Coker went to Gadsden (via Talladega)⁵. It should be noted that no evidence has been presented as to what occurred on Coker's trip nor the purpose of the trip. Nor is there any evidence that Preuitt ever accepted this offer, or that Coker advised him to do so.

In presenting its case the Government has to take the events completely out of sequence and thus out of context, in an effort to make things appear in a manner they did not. In addition, it does not simply take the facts in a light most favorable to itself but improperly distorts them. For instance, the Government's representation that Coker confirmed "the illicit commitments, Massey, defendant Walker and Gilley made to defendant Preuitt" is a completely erroneous statement. The record reference does not support this assertion. (7/8/2011 Trial Tr. at 178). On page 179 Massey does state that the "offers" were confirmed through Gilley. However, Massey was not on the call between Coker and Gilley and has no basis for making such a representation. Only Coker and

³ (J-82: P2 L28-29)

⁴ (J-82: P3 L10-16)

⁵ (J-88:P1 L37-38)

Gilley know what occurred on this call and Ronnie Gilley stated that the only thing mentioned was country music artists—nothing more.

In fact, the evidence presented is directly contrary to the Government’s assertion. During the call between Massey and Coker on March 26th, in which Massey states that he will get Gilley to call Coker, Coker states that he believes it is John Anzalone who is doing the polling for Preuitt (not Walker)⁶. Coker further clarifies that “not having been a party to any of that”, meaning the Gilley-folks efforts with regard to Sen. Preuitt.⁷ The evidence is clear that Coker was not working in concert with Gilley, Massey and Pouncy.

In general, the testimony is clear that the Gilley-folks did not trust the McGregor-folks, accused them of withholding versions of the bill⁸, drafting legislation that actually excluded Houston County from SB380⁹, preparing a legal defense to court cases that would have worked against Country Crossings and even excluded Massey from strategy sessions. Massey summarized to Ken Guin, “I’ve been fighting Milton this whole damn session” [meaning the 2010 Legislative Session].¹⁰ While there is evidence that the two sides communicated with regard to legitimate lobbying efforts, Coker was in the dark with regard to the Gilley-folks illegal activities. For example, Coker was not present at

⁶ (J-82: P1 L35-42)

⁷ (J-82: P3 L34-35)

⁸ (J-42: P1 L22-27)

⁹ (J-612: P1 L16-29)

¹⁰ (J-637: P1 L38-45)

any of the meetings involving Sen. Beason. Nor did anyone advise Coker of their illegal efforts in that regard. Even with regard to the legitimate lobbying efforts, Coker was not on the same page as the Gilley-folks. One of the most important elements of the legislation for Gilley was the General Bill which would allow Country Crossing to re-open. Obviously, if Coker were in a conspiracy with the Gilley folks, he would have been leading the effort in this regard. Instead, when Massey inquired about the General Bill, Coker responded on March 18th: “What general bill? ... That bill’s dead.”¹¹ Clearly Coker was not a member of any conspiracy, especially one that included Gilley, Massey and Pouncy.

Additionally, in the last sentence of the paragraph dealing with Senator Preuitt (first paragraph on page 9), the Government concludes that Coker “solidified his conspiratorial involvement” by telling McGregor that Gilley put the “icin’ on the cake”. The Government, having put a date on every sentence leading up to that point, simply cites as authority “Ex. J-150”. Placing this proposition last in the sequence makes it appear that this occurs after the preceding events which were dated March 29th and 30th. However, J-150 is a conversation which occurred on March 23, 2010 between McGregor and Coker, before all of the aforementioned events. In fact, J-150 is a conversation that occurred three days before J-82 (call between Coker and Massey) wherein Coker calls to

¹¹ (J-617: P1 L29-33)

“figure out... find out... figure out... figure out... what heavily involved means”.¹² It is three days before Massey then explains that he will have Gilley call Coker so that he can hear it from the “horse’s mouth”.¹³ It is three days before Gilley and Coker speak. It is over a week before Coker’s trip to Talladega and Gadsden and Preuitt’s vote on SB 380.

After learning, on March 26th that “heavily involved means” country music artists, Coker never again described this as “icin’ on the cake” or in any way thanked Gilley and Massey for their efforts. As admitted by Massey, these country music artists carried a certain negativity and political sensitivity because they were closely associated with Gilley. Mere association with these artists could provide negative association for a politician’s campaign. In fact, Massey opined that he believed it was a bad idea for Sen. Harri Anne Smith to utilize their services when she did.

The Government’s final paragraph relating to Coker deals with Coker and Senator Means and specifically with Pouncy’s statement that she “understood ... Coker was securing additional money from other gambling operators for defendant Means”. First, this is not charged anywhere in the indictment—it is not an overt act, nor is Coker charged

¹² (J-82: P2 L14-32)

¹³ (J-82: P3 L10-11)

with offering bribes to Senator Means.¹⁴ Second, it is in contradiction with her 302.¹⁵ Finally, Pouncy's understanding has no basis in fact as there is no evidence to support this understanding as being correct – there is not a single call, dollar, transaction, or document of any type to support that Pouncy's newly formed understanding (or what she previously did not understand) has any basis in fact. It can be taken as nothing more than a recent fabrication to secure more favor with the Government (regarding matters that are uncharged in the indictment).

Jarrold Massey stated in his testimony that “we [the Gilley side and McGregor side] were in the same boat, although we had different ideas of how to reach those goals.” (Massey Testimony 7/8/11) That clearly and succinctly states the distinction between the two camps. Both sides wanted the passage of SB380 but Gilley went about it illegally while McGregor went about it legally. The Gilley side was in a rush to get something done immediately, as they had incurred a lot of recent expenses and were shut down. Unable to pay their massive debt, the Gilley team cut corners and performed illegal activities to try to accomplish their goal. The McGregor side was already established and

¹⁴ See: Count 1 (Conspiracy) ¶¶74-82; Count 5 (Bribery offered to Means by Gilley, Massey, McGregor and Pouncy); Count 6 (Bribery solicited by Means from Gilley, Massey and Pouncy); Count 7 (Bribery solicited by Means from McGregor); Count 19 (Means extortion of McGregor); Count 20 (Means extortion of Gilley, Massey and Pouncy)

¹⁵ Bill Clark cross-examined Pouncy on this point and confronted her with her interview statement. The 302 of the April 28, 2010 interview states: “In Means conversation with Pouncy, he made reference to lobbyist Tom Coker doing some stuff for him or putting it together, but Pouncy did not know what he meant.” (Page 3 last sentence of 2nd paragraph).

veterans of numerous gambling wars—many of which they had lost and a few they had won. But they continued to pursue their goals through legal efforts via legitimate respected lobbyists who did not have an interest in the outcome. Tom Coker was a contract lobbyist who had no interest in the facility he represented nor incentives in his contract at all, let alone any tied to the passage of the legislation. Those “different ideas on how to reach those goals”, as admitted by Massey, clearly demonstrate that there was no conspiracy. If there was a conspiracy, Tom Coker was not a part of it.

WHEREFORE, Coker respectfully requests that, consistent with the evidence in this case, the Court deny the existence of a conspiracy in which Coker was a participant and dismiss Count One in its entirety or at least in regard to Coker.

Respectfully submitted

/s/David McKnight

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CERTIFICATE OF SERVICE

I hereby certify that on July 25th, 2011, I hand delivered a copy of the foregoing to the Court and the United States Attorney in open court and will file a copy electronically to be served upon all counsel of record through the CM/ECF system tonight.

/s/David McKnight
Of Counsel