

**No. 10-11076-F**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

**UNITED STATES OF AMERICA,**

**Appellee.**

**v.**

**LARRY P. LANGFORD,**

**Defendant/Appellant,**

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**On Appeal from the United States District Court  
for the Northern District of Alabama  
Southern Division  
Case No. 7:08-CR-00245-LSC-PWG-1**

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**BRIEF OF APPELLANT**

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No. 10-11076-F

*United States of America v. Langford*

**CERTIFICATE OF INTERESTED PERSONS AND  
CORPORATE DISCLOSURE STATEMENT**

The appellant, through undersigned counsel, certifies that the following persons and entities have an interest in the outcome of this case:

Individuals

1. Baxley, William, counsel for co-defendant Blount;
2. Coogler, L. Scott, United States District Judge for the Northern District of Alabama;
3. Hart, Miles, Assistant United States Attorney, Northern District of Alabama;
4. Ingram, James, Assistant United States Attorney, Northern District of Alabama;
5. Johnson, Tamarra, Assistant United States Attorney, Northern District of Alabama;
6. Langford, Larry, Defendant/Appellant;
7. McLean, Robert Joe, counsel for co-defendant LaPierre;

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8. Martin, George, Assistant United States Attorney, Northern District of Alabama;
9. McKnight, David, counsel for co-defendant Blount;
10. Peeples, Lloyd, Assistant United States Attorney, Northern District of Alabama;
11. Phillips, James, Assistant United States Attorney, Northern District of Alabama;
12. Rasmussen, Michael, attorney for Defendant/Appellant;
13. Singleton, Scarlett, Assistant United States Attorney, Northern District of Alabama;
14. Spina, Thomas, counsel for co-defendant LaPierre;
15. Threatt, Glennon, co-counsel at trial for the defendant
16. Vance, Joyce, United States Attorney for the Northern District of Alabama;

Corporate entities

17. Bank of America (BAC);
18. Royal Bank of Canada (RY);

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19. Goldman Sachs Group Inc (GS);
20. J. P. Morgan Chase & Co. (JPMPC);
21. Jefferson County, Alabama;
22. Raymond James Financial (RJF);

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MICHAEL V. RASMUSSEN  
Attorney for the Defendant/Appellant

**STATEMENT REGARDING ORAL ARGUMENT**

Oral argument is requested in order to assist the decisions of this honorable Court. *See* Fed. R. App. P. 34(a)(1).

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**STATEMENT OF JURISDICTION**

This is an appeal from a judgment of conviction entered in the United States District Court for the Northern District of Alabama in a criminal case; this Court therefore has jurisdiction pursuant to Title 18, *United States Code*, § 3742(a), Title 28, *United States Code*, § 1291.

**STATEMENT OF THE ISSUES**

I.

WHETHER THE COURT ERRED IN ADMITTING AND EXCLUDING EVIDENCE OF INTENT.

II.

WHETHER THERE WAS SUFFICIENT EVIDENCE TO FIND THAT THE DEFENDANT MADE ANY FALSE OR FRAUDULENT PRETENSES, REPRESENTATIONS OR PROMISES WITHING THE MEANING OF THE MAIL AND WIRE FRAUD STATUTES. WHETHER CERTAIN ITEMS WERE SHIPPED IN FURTHERANCE OF THE ALLEGED SCHEME.

III.

WHETHER THE BRIBERY STATUTE REQUIRES A SPECIFIC *QUID PRO QUO*. WHETHER WHARTON'S RULE APPLIES TO THAT STATUTE.

IV.

WHETHER THE PRETRIAL PUBLICITY, THE ANSWERS BY THE JURY VENIRE, AND THE GOVERNMENT'S CONDUCT IN INTRODUCING AND EMPHASIZING PREJUDICIAL AND IRRELEVANT EVIDENCE LINKED TO THE PUBLICITY REQUIRED A CHANGE OF VENUE.

## **STATEMENT OF THE CASE**

### **I. COURSE OF PROCEEDINGS AND DISPOSITION BELOW**

On November 25, 2008, a grand jury in the Northern District of Alabama returned a superseding indictment charging Larry Langford, formerly a Commissioner for Jefferson County, Alabama, with counts of conspiracy, money laundering, bribery, mail and wire fraud, and tax evasion, all arising out of allegations that he accepted bribes from a person who did business with the County. (R10)

Mr. Langford's trial commenced October 19, 2009 and ended October 28, 2009 with guilty verdicts on all counts. On March 5, 2010, he was sentenced to fifteen years imprisonment. On March 9, 2010, he filed a timely notice of appeal. On March 31, 2010. Mr. Langford self reported to the Bureau of Prisons and is serving the sentence. (Docket sheet; R227; R257)

### **II. STATEMENT OF THE FACTS**

#### **The sewer debt**

Jefferson County, Alabama contained a number of municipalities, including the city of Birmingham. In the 1990s, the sewer systems in the County were in such poor condition that raw sewage often overflowed into nearby rivers during heavy rain. This violated the Clean Water Act. In 1996, a federal court in

Birmingham ordered the County to bring its system into compliance with the Act.

*Kipp et al v. Jefferson County*, CV-93-G-2492-S. (R249-503-05)

The effort took several years and over three billions dollars to complete. To raise the money, the County issued long term bonds. Some of the bonds paid a fixed rate of interest, some a variable rate. The County Commission increased sewage fees to pay the interest. (R249-519-22, 592, 598-99, 604, 615)

Mr. Langford

The Commission consisting of five Commissioners elected from geographical divisions of the County. Mr. Langford was elected to the Commission in 2002 as a Democrat. He became its President. (R248-489-91, 496, 501)

At the time, the public was displeased with the size of the bond debt and the increases in the sewer fees. The Commission embarked on efforts to restructure the debt in order to limit the increases. It replaced older bonds with new bonds and used a device called interest rate swaps to stabilize the interest rates. These transactions required the participation of large banks, such as J. P. Morgan, because they were the only ones who had the capital necessary to act as underwriters for the bonds (an underwriter buys the bonds from the County at a discount and attempts

to sell them to the public for slightly more, making money on the difference) or to back the interest rate swaps.<sup>1</sup> (R250-949-1063; R252-1348-49)

*The large banks*

These large banks, however, were not local, most being based in New York. It was customary for each County Commissioner to select a local banker to participate with the large banks as underwriters. When the large banks approached counties and municipalities to solicit business, they often hired local bankers as consultants. When they do so, it is the large banks' responsibility to decide how fees to their consultants are disclosed to the counties or municipalities they work with. (R248-388-90; R249-509-10; R249-589, 597, 704-05; R250-977-78).

*Blount*

Mr. Blount was a fellow Democrat (at one time the chairman of the Alabama Democratic Party), an experienced banker, and a close personal friend of Mr.

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<sup>1</sup> A county that wanted to stabilize variable interest rates it paid on, say, bonds with a face value of ten million, would agree with a large bank, called a counter party, to "swap" interest rates on a fictional ten million, with the county paying a fixed rate of interest on that fictional amount to the bank and the bank paying a variable rate of interest on the same amount to the county, with the intended result that if the interest the county paid on the actual bonds went up, so would the interest on the fictional ten million the bank would pay the county, thus off setting the increase on the actual bonds. The risk was that the forces that drove interest rates up or down on the actual bonds were different from the forces that drove the interest rates up or down on the fictional amount.

Langford. Mr. Blount often visited Mr. Langford at his home and they frequently gave each other gifts, some expensive. For example, Mr. Langford had given Mr. Blount shoes, dress shirts, leather jackets, golf clubs, a Benelli shotgun, pistols, and stereo equipment. Blount had also participated in earlier bond transactions involving Jefferson County. (R249-603, 643; R250-809-811, 938-39, 997, 1011)

Upon taking office in the Fall of 2002, Mr. Langford selected Mr. Blount to be involved in the bond transactions. His stated reason was that he did not know the big bankers and that he trusted Mr. Blount to protect the County's interests. His instructions to Mr. Blount were to do everything possible to reduce the increases in sewer rates. (R250-949-1062; R252-1371-76, 1400)

At various times over the next few years, Mr. Blount worked as either an underwriter, remarketer, or advisor for the County, or as a consultant to the big banks. His involvement was well known. Witnesses testified that Mr. Blount worked hard and helped to get the deals done on terms very favorable to the County. At the time it was believed that the deals saved the County millions. (R249-629, 630-31; R250-834-835, 988-89, 933-95; R252-1262,1299-1370, 1371-1376, 1396-1401 DX 9)

Fees paid by the County to Mr. Blount were disclosed directly in the transactional documents. The fees paid by the banks to Mr. Blount came entirely

from the banks' pockets, and were not passed on to the County. Mr. Langford was advised that it was the banks responsibility to decide how to disclose the fees they paid to Mr. Blount. They did so via letters addressed to Mr. Langford as the President of the Commission. The first time it occurred, the bank involved discussed the disclosure process with the County's outside counsel; Mr. Langford was not a party to the discussions. Although not everyone reviewed the letters, they were nevertheless "public records" within the meaning of Alabama state law, and other people involved expected that Blount would be paid by the banks. (R249-540, 589, 602, 628, 641, 649, 704-05, 712-713; R252-1396-1406, 1599-1608)

#### Loans

In 2002, Mr. Langford, was behind on some personal debts. Blount asked a girlfriend who was an officer at a bank (which was not involved in the bond deals) to help Mr. Langford get a short term \$50,000 loan from the bank. (R248-364-70; R250-827-846)

When it became due, Mr. Langford was unable to repay it. He asked another friend, Al Lapierre, for help. Lapierre was a lobbyist who had done work for Blount. Lapierre contacted Blount and they discussed Mr. Langford's problem Blount saw this as an opportunity to gain influence over Mr. Langford. Blount directed Lapierre to borrow money from the same bank and use it to pay off Mr.

Langford's loan with the understanding that when Lapierre's loan became due Blount would provide the money to satisfy it. Blount did. Neither Lapierre nor Blount told Mr. Langford of this arrangement. Twice more Mr. Langford had trouble with debt, and twice more he asked Lapierre for help. Each time Lapierre contacted Blount and Blount directed Lapierre to give the money to Mr. Langford with the understanding that Blount would compensate Lapierre. Each time Lapierre wrote checks on his own account payable to Mr. Langford. Each time Mr. Langford deposited the checks into his own account. Again, neither Blount nor Lapierre told Mr. Langford of the money came from Blount. (R250-862, 881-82, 998, 1001, 1078-1185)

The money totaled approximately \$ 150,000. When Mr. Langford was later asked about it, he said he considered the money to be legitimate loans from Lapierre He said it was his intent to repay the loans when commercial property in which he had an interest was sold, but the real estate market collapsed, the property remained unsold, and Mr. Langford was unable to repay the loans. The fact that Mr. Langford was going to use the proceeds from the sale of property to satisfy the loans was mentioned at the time of the loans. Written promissory notes were also prepared but not executed. (R248-364; R250-944; R252-1247-1262; R253-1582-99)

Gifts

From time to time between 2003 and 2005, Mr. Blount bought Mr. Langford clothing and jewelry worth over \$39,000 collectively. Blount bought these items with his own credit card, in front of witnesses, and with no effort at concealment. If an item was shipped to Mr. Langford, it was shipped to his address at the County Commission with no effort to conceal the source of the gift or the recipient. Mr. Langford never received any cash, and there were no secret accounts, or addresses. (R250-949-1063)

Mr. Langford did not ask Blount for these items. Blount testified that Mr. Langford would admire something at a store, and Blount would buy it for him. Conversely, when Blount admired something of Mr. Langford's, even expensive items, Mr. Langford insisted on giving the item to Blount. (R250-949-1063)

Mr. Langford argued that he considered the items he received from Mr. Blount to be gifts from a wealthy friend. (R248-298-328; R250-873, 888, 900, 903, 999, 1008-10)

The government also alleged that Blount and Lapierre paid Remon Danforah, the owner of a Birmingham clothing store, over \$54,000 for clothes Danforah claimed he had sold to Mr. Langford. Mr. Langford denied this and argued that Remon was scamming Blount and Lapierre; he told Lapierre that

whatever clothes he bought at the store he paid for. Danforah's records failed to support the \$54,000 figure. They also indicated that he kept running totals for invoices for Mr. Langford that were different from running totals for invoices for Blount that were supposed to be clothes for Mr. Langford. Danforah admitted that Langford visited the store no more than seven times, and that he made payments two or three times. Rulings excluding evidence offered by Mr. Langford to impeach Remon's credibility is an issue herein. (R248-416-18, 420-68; R250-906, 1078-1185; DX 22-24)

Disclosure

Mr. Langford did not disclose the loans on ethics filings (The forms required disclosure of such loans, but the underlying statute did not). A few years later, the SEC opened an investigation into the bond deals, and questioned Mr. Langford about loans. He said he had borrowed money from Mr. Lapierre, and thought he had signed a note or notes, but could not remember. When asked by the SEC about gifts from Mr. Blount, Mr. Langford disclosed only a small portion. After the questioning, he signed copies of the notes and amended his ethics filings. (R250-01078-1185; R252-1247-1262)

*Plea agreements*

Blount and Laperre pleaded guilty and cooperated with the government in return for favorable sentencing recommendations. They testified that they had agreed between themselves to do things to influence Mr. Langford, but admitted that they had no such discussion with Mr. Langford, They admitted they never told Mr. Langford that Blount was the source of the loans. They admitted they never told Mr. Langford what they wanted in return for the loans or the gifts. They admitted that Mr. Langford never ask for, nor was offered a cut of any of the more than seven million dollars Blount made on the various deals. Blount admitted that he never told Mr. Langford the gifts were in return for putting him in the bond deals. Blount also conceded he was a qualified banker and that he in fact worked for the best interest of the County. (R250-953-59, 964, 966, 1003-04, 1078-1185)

*The defense at trial*

Mr. Langford admitted that he accepted the loans and the gifts, with the exception of the clothes from Danforah, but argued that the loans and the gifts were legitimate. He argued that he was not, corruptly influenced, and that he had good valid reasons for involving Mr. Blount in the bond transactions. (R248-298-328)

Publicity

The case created a media storm, not only because of the allegations of corruption, but because the sewer debt was already controversial and because Mr. Langford, who had become the mayor of Birmingham, was the only defendant in this or any other sewer prosecution who was arrested by the government. His arrest created an ugly media frenzy that remained unabated until he reported to prison. (R change of division and bail motions)

The feedback from the public was universally negative. One reader wrote a typical comment: “It will be justice served the day they lock him up and auction off all his personal possessions including the Fairfield house, the corvette, the cadillac, and even the dog.” Political cartoons, including those reproduced below, vilified and mocked him. (R129)





In the hopes of avoiding the ill will against him, Mr. Langford asked that the trial be moved from Birmingham, Alabama, to Tuscaloosa, Alabama, 58 miles away, but in the same District. The District Court granted the request. (R130)

But just before trial, other allegations were made against Mr. Langford by another source. They generated more negative publicity.

Casinos were and are a controversial topic in Alabama. Mr. Langford was a known supporter of legalized gambling and was himself an avid gambler. Before trial, civil law suits were filed, allegedly by disappointed gamblers trying to get losses back, against casinos patronized by Mr. Langford alleging that the casinos rigged electronic bingo games (which played like slot machines) to give Mr. Langford thousands of dollars in bogus winnings. One of the suits was against Milton McGregor. McGregor was well known in Alabama as an owner of gambling interests; he was, and is, at the center the gambling controversy in

Alabama. state. Another suit was filed, just days before trial, against Greentrack, a casino close to Tuscaloosa, the trial venue. It also alleged that games were rigged to give Mr. Langford winnings. The suit generated considerable publicity, which continues to this day. (R247-228-29; R233)

Venue

This, as well as responses by members of the jury venire during jury selection, led Mr. Langford to move for a change of venue out of the District. (R247-321, 221-24) The court denied the motion.

The trial

Since there was no direct evidence of Mr. Langford's intent (no evidence of admissions or of express agreements between he and Blount and/or Lapierre, etc) both sides offered circumstantial evidence on the issue. Rulings that admitted or excluded such evidence are issues in this appeal.

Mr. Langford also challenged the court's interpretation of the elements of the bribery statute, 18 U.S.C. § 666, and the mail and wire fraud statutes, 18 U.S.C. §§ 1341 & 1343, as well as the sufficiency of the evidence on the same. These are also issues on appeal.

### III. STANDARDS OF REVIEW

The admission of evidence over objection, or the exclusion of offered evidence, is reviewed for abuse of discretion. *United States v. Eckhardt*, 466 F.3d 938, 946 (11<sup>th</sup> Cir. 2006). If the objection is to hearsay and raises the right to confront witnesses, the standard of review is *de novo* as opposed to an abuse of discretion. *United States v. Yates*, 438 F.3d 1307, 1311-12 (11<sup>th</sup> Cir. 2006).

The sufficiency of the evidence is reviewed *de novo*, viewing the evidence in the light most favorable to the government and accepting all reasonable inferences in favor of the verdict. *United States v. Klopff*, 423 F.3d 1228, 1236 (11<sup>th</sup> Cir. 2005). When the government relies on circumstantial evidence, reasonable inferences, not mere speculation, must support the conviction. *Id.*

The refusal to give a requested jury instruction is reviewed for an abuse of discretion. *United States v. Carrasco*, 381 F.3d 1237, 1242 (11<sup>th</sup> Cir. 2004) (*per curiam*).

## SUMMARY OF THE ARGUMENT

### I.

Intent was the key issue in this case. Since there was no direct evidence of the defendant's intent, both the government and the defendant offered circumstantial evidence to prove intent. The trial court made numerous errors in the admission and exclusion of such evidence, which alone or collective requires a new trial.

### II.

With respect to the mail and wire fraud counts, the evidence was insufficient to prove the defendant made any false or fraudulent pretenses, representations or promises, an essential element under the mail and wire fraud statutes.

With respect to the mail fraud counts, the evidence showed that the alleged scheme to obtain property was complete, that is, the defendant already had ownership of the property, before it was shipped.

### III.

The bribery statute requires a specific quid pro quo, but the trial court failed to so charge the jury. Wharton's rule also required the dismissal of portions of the conspiracy count charging bribery.

## IV.

Both the pretrial publicity, the answers by the jury venire, and the government's conduct in introducing and emphasizing prejudicial and irrelevant evidence linked to the subject of the pretrial publicity required a change of venue.

**ARGUMENT****I. RULINGS ON EVIDENCE OF INTENT**

Intent was the key issue in the trial. Intent is most often proved by circumstantial, rather than direct, evidence. *United States v. Willis*, 560 F.3d 1246, 1250 (11<sup>th</sup> Cir. 2009); *United States v. Parker*, 302 Fed. Appx., 889, 891 (11<sup>th</sup> Cir. 2008); *United States v. Clarke*, 331 Fed. Appx. 670 (11<sup>th</sup> Cir. 2009). In *United States v. Foshee*, 578 F.2d 629, 632 (5<sup>th</sup> Cir. 1978 (Ala.)), the Court of Appeals noted the importance of such evidence for both the defendant as well as the government:

It must be remembered that the burden is on the Government to prove beyond a reasonable doubt that the defendants had the specific intent to defraud. We have stated before that in mail fraud cases proof of intent is “paramount . . . because the good faith of a defendant . . . is ordinarily a complete defense.” Indeed, “often the only available defense is that of good faith.”

(*Foshee*, at 632-634) Because the trial court in *Foshee* restricted the defendants argument regarding the inferences to be drawn from their subsequent conduct, the Court of Appeals reversed their convictions. More recently, in *United States v.*

*Ethridge*, 948 F.2d 1251 (11<sup>th</sup> Cir. 1991), the Eleventh Circuit reaffirmed the principles stated in *Foshee*. In *Ethridge*, the trial court excluded circumstantial evidence of the defendants' intent. The Eleventh Circuit cited *Foshee*, then stated:

Although the trial court has discretion to exclude testimony and we will not reverse absent an abuse discretion, *United States v. Cohen*, 888 F.2d 770, 776 (11<sup>th</sup> Cir. 1989), “[t]he trial court’s discretion does not extend to exclusion of crucial relevant evidence.” *Id.* at 777. The evidence at issue in this case was crucial to the Ethridges’ defense, and its exclusion was error. Because the Ethridges were prevented from presenting an adequate defense, we have no alternative than to require a new trial.

*Ethridge*, at 1218.

In Mr. Langford’s case, the evidence of intent, for both sides, was entirely circumstantial. The government cited the number and value of the gifts and loans, failures to disclose the same at different times, and other circumstances. The defendant cited the fact that the value of what the defendant received was minuscule compared to the fees Blount earned (less than 1%), that the so-called bribes were conveyed openly and with traceable records and did not involve cash, hidden accounts, mail drops, straw men, or other things usually associated with corruption, and that there were good legal reasons to include Mr. Blount in the bond transactions.

The District Court made errors by admitting other evidence of intent offered by the government, and excluding other evidence of intent offered by the defendant. These errors materially bolstered the prosecution and weakened the defense.

*Gambling information in the tax returns*

The tax counts were based on the theory that Mr. Langford did not report the loans and gifts as income. The fact that he did not do so was uncontested.

Unrelated to the government's theory was information in Mr. Langford's tax returns that showed his net gambling winnings from casinos. It was on the first page of the returns, in the calculations, and in the copies of W-G2s issued by the casinos. And It was eye catching:

For 2003: \$28,040;

For 2004: \$4,200;

For 2005: \$80,510.

The government introduced the entirety of this information. (GX 209, 211, 213).

The government also deliberately introduced and emphasized evidence of a relationship between Mr. Langford and Milton McGregor, the controversial

gambling magnate.<sup>2</sup> In the background was the gambling controversy in Alabama in general, and the front page allegations that casinos rigged their games and that Mr. Langford had been bribed by gambling interests, including Mr. McGregor.

There was absolutely no legitimate need for evidence of Mr. Langford's gambling winnings, or his relationship with Mr. McGregor. The government conceded that the gambling income was **not** part of their tax theory.<sup>3</sup> The evidence was not probative of any issue in the case, and was irrelevant and inadmissible under Rules 401 and 402 of the *Federal Rules of Evidence*.<sup>4</sup>

The fact that Mr. Langford's winnings drew numerous negative comments from the media and members of the public, Both during and after trial, proves the

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<sup>2</sup> The evidence was that after Blount had his girlfriend arrange the bank loan for Mr. Langford, and after he learned that Mr. Langford was unable to repay the loan, Blount tried – unsuccessfully – to get the bank to either renew or increase the loan. Blount suggested that his girlfriend ask Mr. McGregor to guarantee the loan. He did not. There was no evidence Mr. Langford contacted Mr. McGregor.

<sup>3</sup> The government had thoroughly investigated Mr. Langford's winnings, but did not include anything regarding them in the indictment.

<sup>4</sup> Rule 401 states;

“Relevant evidence” means 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 that it would be without the evidence.”

Rule 402 states that “evidence that is not relevant is not admissible.”

evidence was also highly inflammatory. Recently, the Birmingham News ran front page story, above and below the fold, announcing the defendant's winnings and inferring that no one could win that much legitimately and that they must be a payoff from gambling interests. The Plaintiff's attorney in the suits against the casinos stated:

These records [the tax returns] demonstrate unequivocally that what the plaintiffs have alleged did in fact occur. Mr. Langford has, miraculously, won over five hundred and fifty jackpots at Victory Land [McGregor's casino].

One editorialist stated:

Are they payoffs? Or is Langford – despite the prison thing – the luckiest guy in the world?

(R233).

These reactions prove the prejudicial impact of this evidence. Something else that proves the prejudice is the speed and completeness of the verdicts. In *Skilling v. the United States*, \_\_\_ US \_\_\_, 130 S.Ct. 2896 (June 24, 2010), the Supreme Court recognized that whether a jury finds a defendant guilty of all or some counts is an indicator of prejudice; in fact, the Supreme Court considered this factor one of “prime significance” for determining prejudice. 130 S.Ct. at 2916. In *Skilling* the jury deliberated five days. Here the jury convicted Mr. Langford of every count after deliberating an hour or two. Even if the gambling evidence was somehow

relevant, it should have been excluded or limited under Rule 403 of the *Federal Rules of Evidence*.<sup>5</sup>

Before trial, and throughout trial, Mr. Langford moved to exclude the evidence of his winnings, and references to Mr. McGregor. In a pretrial motion he argued:

The gambling income is not relevant. The government has advised that the tax counts are based solely on the allegation that benefits received from the co-defendants were not reported on the returns. The defendant offered to stipulate that the defendant filed the returns identified in the indictment, and that they did not include the benefits he allegedly received from the co-defendants. The government refused the offer.

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Overt Act # 8 of Count Six alleges that in furtherance of the conspiracy William Blount “helped defendant LARRY P. LANGFORD obtain a \$50,000 unsecured loan with a six month term from Colonial Bank.” The defendant does not contest this fact. Blount helped to arranged this loan through a girlfriend who worked at Colonial Bank. Several months later, Blount asked the same person to help arrange a larger loan from the defendant. The bank never did, but during that time Blount exchanged e-mails with his girlfriend. The government has included in its exhibit list copies of those e-mails. According to the e-mails, Mr. Blount suggested that they get Milton McGregor, who was on the board of the bank, to help. He never did. The e-mails refer to Mr. McGregor as “Uncle Milty.” Mr. McGregor owns a number of gambling casinos in the state. He is a well

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<sup>5</sup> Rule 403 states:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

known to the public, not only because of his ownership of a controversial business, but because he personally appears in television and bill board ads for his casinos. He is a polarizing public figure. The search term “Milton McGregor” in the al.com site produced 439 hits. The attachment contains summaries of the first 15, some of which reference the fact that he and Mr. Langford support each other. Also attached is an article describing a raid plus comments posted by readers; one at least refers to McGregor. The e-mails and the references to McGregor in the e-mails have no probative value. On the other hand, the danger of prejudice is substantial.

(R160; R260). Mr. Langford renewed the objections during trial (R248-374-76).

He again offered to stipulate that the loans and gifts were not reported in the returns. Alternatively, the he moved to strike the references to gambling from the returns. (R247-229, R249-671-676). After the government introduced a summary chart of its IRS case through an IRS agent, Mr. Langford suggested that since the chart accurately stated the numbers from Mr. Langford’s tax returns, without mentioning gambling, the chart could substitute for the returns. Mr. Langford also suggested that even if the tax returns remained in evidence, that they not go back to the jury room during deliberations unless the jury specifically asked for them. The government refused the stipulation, fought to keep the references to gambling in the exhibits, opposed every suggestion by Mr. Langford to temper the prejudice, and gratuitously and repeatedly brought up Mr. McGregor while introducing evidence and arguing to the jury (R254-1800), even though it added nothing

legitimate to the government's case. (R248-362; 248-372-76, 379-84; R253, 1506, 1660-62, 1800; GXBT 216

The District Court's stated reason for rejecting Mr. Langford's arguments was that gambling at a casino was legal. The error in this reasoning is that neither rule 401, 403 or 404 of the *Federal Rules of Evidence* makes any distinction between evidence of legal activity and illegal activity. There is no reason to assume that a jury cannot be prejudiced by evidence of activity it dislikes, even if it is legal. Furthermore, there is no reason to believe the jury would assume that such winnings were legal; to the contrary, the exhibits offered to keep out this evidence, and common sense proves it would reach the opposite conclusion.

In most cases, the government argues that it needs such evidence to tell the "full story." But what did gambling income have to do with the full story in this case? Nothing. The reason the government wanted to introduce this evidence, and worked so hard to do so, is proved by their efforts to emphasize Milton McGregor position as a gambling magnate and his relationship to Mr. Langford.

After sentencing, Mr. Langford moved for bail pending appeal, stating that this was one of the issues he intended to raise on appeal. (R233: R237) In footnote 2 of its *Response* (R236), the government, in addressing the evidence of gambling, mentioned the need for the "weight of conventional evidence." This is an

admission that the gambling evidence had “weight.” The government also argued that the revenue agent who was their summary tax witness did not mention the gambling in his testimony. This amounts to an admission that the gambling evidence was irrelevant. The refusal to exclude the gambling evidence, and the evidence of Mr. McGregor, was reversible error. *See United States v. Blake*, 107 F.3d 651 (8<sup>th</sup> Cir. 1997); *United States v. Yeagin*, 927 F.2d 798 (5<sup>th</sup> Cir. 1991); *United States v. Jones*, 67 F.3d 320 (D.C. Cir. 1995).

*NBC credit card records*

Other evidence that should have been excluded were bank records related to the defendant’s credit card at the NBC Bank. Mr. Langford had caused the County to hire the bank to be what is called its “financial advisor” for the bond transactions. NBC records (GX 217) show that sometime later, Mr. Langford applied for a credit card from the bank. The bank issued one even though Mr. Langford’s credit rating did not meet the bank’s standards. Mr. Langford later applied for and was granted increases in the credit limit, even though his payment history was poor and the unpaid debt on the card was rising.

The government argued that the records relating to the credit card was relevant under Rule 404(b) of the *Federal Rules of Evidence* as evidence of “other

acts” probative of intent; its theory was that Mr. Langford solicited, and the bank gave, the card and the extensions of credit as bribes to keep the County’s business.

But though possibly relevant, the records still constituted hearsay. The government sought to overcome the bar against hearsay by offering the evidence as business records under Rule 803(6) of the *Federal Rules of Evidence*, the business records exception to the bar against hearsay. Rule 803(6), however, requires that such records be introduced through a custodian of records or another qualified person. The government used a bank employee who was designated a last minute “custodian of records” by the bank. But the witness did not gather or direct the gathering of the records; she was merely handed the records and was designated the custodian by a wave of the hand. (R252-1308-1348)

Even if she was a custodian, that only authorized her to be one of the two classes of witnesses permitted by Rule 803(6) of the *Federal Rules of Evidence* to lay the foundation required by the Rule for the admission of the records. The foundation is: (1) The records must be NBC records; (2) they must be made at or near the time of the recorded event; (3) *they must be made by a person with knowledge*; and (4) they must be both made and kept in the ordinary course of business. The records were from the bank’s credit card department, which did not reside in Birmingham, where the witness worked. The witness had never worked in

the department. It is doubtful that she should have testified to all the elements. Even if she could, she did not. The government failed, for example, to elicit any testimony that the records were *made by a person or persons with knowledge*, an essential requirement for the admission of such evidence. *United States v. Smith*, 318 Fed. Appx. 780 (11<sup>th</sup> Cir. 2009); *United States v. Gueno-Sierra*, 99 F.3d 375, 379 (11<sup>th</sup> Cir. 1996).

The government argued that the records were nevertheless admissible because Mr. Langford did not contest their “trustworthiness.” Rule 803(6) rule permits the admission of records only if a qualified witness lays the foundation, but provides as a caveat that *even if* the foundation has been properly laid by a proper witness, the evidence should be *excluded* if there is an indication that it lacks trustworthiness. This provision is an added protection for the party that opposes the evidence. The government turned this provision on its head. It treated the absence of an indication of untrustworthiness as a *substitute* for the foundation. To the contrary, the government, as the proponent of the evidence, had the burden of proving the foundation, and failed to do so.

In no way did Mr. Langford relieve the government of its burden. In fact, he insisted on it, particularly with respect to this evidence. He argued that the witness was not qualified, and, even if qualified, did not properly lay the foundation.

This error is more than a violation of the *Federal Rules of Evidence*. It is a violation of the defendant's *Constitutional* right to confront and cross-examine the witnesses against him. Mr. Langford made it clear to the District Court that if someone involved in the transactions had presented the records he would not have objected, since he wanted to conduct a cross-examination, and that he objected specifically because the government's use of this witness deprived him of such a cross-examination. The standard of review for this issue is thus *de novo* as opposed to an abuse of discretion. *United States v. Yates*, 438 F.3d 1307, 1311-12 (11<sup>th</sup> Cir. 2006).

*Bank branches used by Mr. Langford*

With respect to the \$50,000 bank loan to Mr. Langford, the government called a loan officer involved in making the loan. She testified, over objection, about the contents of documents she reviewed but which were not in evidence. (R248-340) This was classic hearsay and the testimony should not have been admitted. See Rule 801, *Federal Rules of Evidence*.

*Mr. Langford gave away clothes.*

Among evidence that should have been included was evidence of Mr. Langford's extraordinary generosity. Mr. Langford argued that he should have been permitted to prove that he gave many things away to others, including clothes and

jewelry similar to what he received from Mr. Blount, because it was circumstantial evidence of, among other things, the low subjective value he placed on the gifts from Blount, even if they were objectively expensive. After all, the government constantly reminded the jury of the value of the gifts given by Mr. Blount.

Mr. Langford offered the testimony of Ocie Oden, a minister, that Mr. Langford gave Mr. Oden up to 60 suits, including suits that still had store tags attached. Mr. Oden could not remember the brand names of the suits except one Oxxford suit. The District Court allowed testimony of that one suit on the grounds that Blount had given Oxxford clothes to Mr. Langford. (R253-1566-75).

This limitation, however, missed the point. The subjective value that Mr. Langford placed on any particular suit, whether made by Oxxford or some other company, high end or not, did not depend on whether it came from Blount or someone else (except possibly his wife).

*Remon Danforah's credibility.*

Since the number and value of the gifts was circumstantial evidence of intent, anything showing that Mr. Langford received less than alleged would also be relevant to intent. The government alleged that Blount and Lapierre paid Remon Danforah, the owner of a clothing store, over \$54,000 for clothes for Mr. Langford. Mr. Langford denied this and argued that Danforah was scamming Mr. Blount and

getting paid for clothing Mr. Langford never acquired. Danforah testified. His records supported only a small portion of the payments made by Blount, and he admitted that Mr. Langford came to his store no more than seven times.

Mr. Langford sought to impeach Mr. Danforah with evidence of past activity probative of Mr. Danforah's credibility. The District Court bared the evidence and sealed it on the grounds that it was inflammatory. Mr. Langford asks this Court to review the sealed evidence, which is Court's Exhibit 5. This also was evidence that should have been admitted. (R248-437-468, R249-513-515; DX 22-23, CX 5)

Statements to the SEC

The SEC deposed Mr. Langford during an investigation of the bond transactions at Jefferson County. The government offered selected portions of the deposition into evidence. Those portions concerned events that were at the center of this trial, including the loans, gifts from Blount, the trips to New York, and how people were selected to be in the bond transactions. (R252-1247-64).

The defense asked that other portions of the deposition related to the same subjects be read pursuant to Rule 106 of the *Federal Rules of Evidence*. The court denied the request. (R251-1204-1232)

The excluded evidence bore on Mr. Langford's intent. It explained the property interest that was intended to pay off the loans, that Mr. Langford did not

talk to Blount about the loans he received from Lapierre, that he was unaware of any discussions between Blount and Lapierre regarding the loans, that he was unaware of any money supplied by Blount to Lapierre, that he believed Lapierre made good money (thus being able to make a loan to Mr. Langford), that there was a reason he did not report the loans in his ethics report, why Blount was selected to be in the transactions, and why it was necessary to make the trips to New York.

Rule 106 of the *Federal Rules of Evidence* provides:

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

This Court has held that the rule permits introduction of additional material if it is relevant and necessary to qualify, explain, or place into context the portion already introduced. *United States v. Pendas-Martinez*, 845 F.2d, 938, 944 (11<sup>th</sup> Cir. 1988).

The case at bar meets those qualifications. The trial court's reason for excluding the evidence was that they were not part of the answers to the same questions offered by the government. This reasoning is flawed; the Rule itself contains no such limit, and permits the admission of "any other part" of a writing, or even "any other writing." The exclusion of the evidence was error.

Purchases by Mr. Langford

Most of the purchases made by Blount for Mr. Langford occurred in New York when he and Mr. Langford went shopping. Mr. Langford sought to introduce evidence that he made his own purchases during such shopping trips. He argued that the jury was left with the impression that every time he went to New York he took Blount shopping for the sole purpose of having Blount buy him something, whereas in truth he went shopping for himself, would buy something for himself, and from time to time Blount offered to buy something. This would put a different light on the purchases, but the court excluded the evidence. (R253-1653)

Cumulative error

Since intent was the central factual issue in the case, and impacted, directly or indirectly, every count, each of the errors cited above is grounds for reversal. They are also cumulatively grounds for reversal. See *United States v. Baker*, 432 F.3d 1189, 1223 (11<sup>th</sup> Cir. 2005).

**II. MAIL/WIRE FRAUD ELEMENTS**

With respect to the mail and wire fraud counts, there was no evidence that the defendant obtained or schemed to obtain the alleged property by the use of false or fraudulent pretenses, representations or promises, an essential element under the mail and wire fraud statutes, 18 USC 1341 and 1343. He may have taken some

affirmative steps of concealment after the investigation began, but those do not qualify as acts in furtherance of any scheme. See *Grunewald v. United States*, 353 US 391, 401-02 (1957) and *United States v. Magluta*, 418 F.3d 1166, 1178 (11<sup>th</sup> Cir, 2005).

During closing argument, the government relied on the letters from the banks reporting their fees to Blount to satisfy the “false or fraudulent pretenses, representations, or promises” element. But the letters were not “false or fraudulent pretenses, representations, or promises,” by, or used by, or concealed by, the defendant.

The government argued that since some people involved in the transactions did not see some of the letters, they must have been “concealed.” That is sheer speculation, They were in fact public records, and the government apparently had no difficulty in obtaining them. The first such letter, dated March 28, 2003, said that bank intended to pay fees to Blount, then stated:

We recommend that such payment of fees be made known to bond counsel for the refunding bonds to be issued so that counsel can determine whether such payments should be included in the refunding bond offering document.

In fact, it was made known to bond counsel: The bank discussed this issue directly with bond counsel, an independent law firm that had worked for Jefferson County for many years. Mr. Langford had no participation in those discussions, and the

evidence was that the banks, not Mr. Langford, were responsible for the disclosure method.

Mail fraud counts 64-68, were based on the shipping, of items that Mr. Blount purchased in New York to Mr. Langford's office in Birmingham. The evidence, however, was that Blount would purchase the items for Mr. Langford, who was present, and Mr. Langford then directed the store to ship the items. At the instant Blount purchased the items for Mr. Langford they were Mr. Langford's constructively or actually, the transfer of ownership was complete, and subsequent shipping, whether done that day or the next was not "in furtherance" of any scheme. The government would still have claimed such an item was a bribe, that is, part of the "scheme," whether Mr. Langford shipped it or walked out of the store with it in his hands.

### III. QUID PRO QUO & WHARTON'S RULE

Mr. Langford asked the court to instruct the jury that payments made to gain good will, or received with that understanding, were not prohibited by 18 U.S.C. 666. He also asked the court to instruct the jury that a specific *quid pro quo* was required under that statute. (R243-1673-1749; R254-1753-71, 1887-1927) This issue has been litigated in other cases before the Eleventh Circuit, most recently in the case of *United States v. McNair et al*, 605 F.3d 1152 (11<sup>th</sup> Cir. 2010). Petitions

for certiorari are being filed in that case. Mr. Langford understands that the panel is bound by that decision, but he wishes to preserve his arguments, and therefore adopts all arguments he made below in support of requirement for a good will instruction and a *quid pro quo* instruction, as well as the arguments made by the appellants in the *McNair* case.

Mr. Langford also moved to dismiss portions of conspiracy Count six on the grounds that it violated Wharton's Rule, as described in *Ianelli v. United States*, 420 U.S. 770, 95 S.Ct. 1284 (1975). This was also raised and rejected in the *McNair* case, but Mr. Langford wishes to preserve the argument and therefore adopts the arguments he made in his motion. (R62).

#### IV. VENUE

Not only was the publicity pervasive and negative, at least one of the potential jurors at first failed to disclose that her co-worker had told her "to make sure I find him guilty." (R247-181, 198). Another said her co-worker said "they wished they were going to be on it [the jury] because they would have him be guilty." (R247- 200-02). Another said "A lot of them [her husband, children, son-in-law, and people at church] had said he is guilty;" she then qualified that by saying "it was probably everyone." (R247-198-99). Another was evasive about what other people told her about the case. (R247-193-94). At least three had been

exposed to reports that Mr. Langford had allegedly benefitted from rigged gambling machines, (R247-71-73, 82-83, 88) and one had a grandfather convicted of something to do with casinos (R247-117). Eleven disapproved of legalized gambling (R247-155). While these jurors may not have made it onto the final panel, their answers prove the prejudicial impact of the government's efforts to introduce Mr. Langford's gambling winnings, and to link him to Mr. McGregor. When this information came to light, Mr. Langford moved for a change of venue. (R247-223-24, 229).

The benchmark case for this issue is *Skilling v. the United States*, \_\_ US \_\_ , 130 S.Ct. 2896 (June 24, 2010), a case that also involved considerable negative pretrial publicity. In affirming the conviction, the Supreme Court cited four factors. The first was the large size and diversity of the community from which the jurors were drawn, Houston Texas, the fourth most populous city in the United States with 4.5 million people eligible for jury duty. The second was that the observation that in cases where the Court reversed for failure to change venue the pretrial publicity was more memorable and prejudicial. The third was that the pretrial publicity had faded considerably by the time the trial began. And the fourth was that the jury, which deliberated five hours, acquitted Skilling of some counts. 130 S.Ct. 2916-17.

Mr. Langford's case is different are more egregious on all four points. First, all of Alabama does not have 4.5 million people eligible for jury duty, much less the Northern District of Alabama, much less the Divisions encompassing Birmingham and Tuscaloosa.<sup>6</sup> While the pretrial publicity may have been comparable in tone to *Skillings*, unlike *Skillings*, it continued in frenzy right up to and into Mr. Langford's trial; in fact, it got a considerable boost just before trial with the allegations that Mr. Langford benefitted from rigged gambling machines. In *Skilling*, the Supreme Court noted that there was no publicized confession as in other cases that required a change of venue; but in Mr. Langford's case, the public was well aware that after his first SEC deposition, the SEC brought him back and he took the "fifth" numerous times. Those depositions were filed in civil cases the SEC brought in Birmingham before trial; In its filings the SEC alleged bribery. The media immediately took note. (See the cartoon on page 12 that ridiculed his taking the fifth") . Finally, there were no five days of deliberation and no split verdict here. This was the factor the Supreme Court said was of "prime significance."

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<sup>6</sup> The city of Houston encompasses 600 square miles, more than enough to include Jefferson and Tuscaloosa County.

There are a couple of other distinguishing factors. In *Skilling*, the Supreme Court noted the use of an extensive written questionnaire; that was denied in this case. But most important, the government in *Skilling* apparently did not try to take advantage of the publicity, as it tried to take advantage of the publicity regarding gambling and McGregor in this case. The motion for change of venue should have been granted.

### **CONCLUSION**

For the foregoing reasons, the judgments of conviction should be reversed the mail fraud counts should be dismissed for insufficient evidence, and the remaining counts remanded for a new trial.

Respectfully submitted,

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Michael V. Rasmussen,  
Attorney for the appellant

### **CERTIFICATE OF COMPLIANCE**

I certify that this brief complies with the type-volume limitations set forth in F.R.A.P. 32(a)(7)(B). This brief contains 7912 words.

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Michael V. Rasmussen  
Attorney for the appellant

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing brief has been served on counsel for the United States/Appellee by mailing a copy by first class mail to them this August 11, 2010, 2010 to:

United States Attorney  
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and by mailing the original and additional copies by first class certified mail, postage prepaid, to the Clerk of this Honorable Court on the same date, addressed as follows:

Clerk's Office - Appeal No. 10-11076-F  
U.S. Court of Appeals - Eleventh Circuit  
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