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U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
vs.	)	**2:08-cr-245-LSC-PWG**
	)	**SUPERSEDING**
LARRY P. LANGFORD	)	

LARRY P. LANGFORD'S

MOTION FOR NEW TRIAL
&
RENEWED MOTION FOR JUDGMENT OF ACQUITTAL

Comes now the defendant Larry P. Langford, and FIRST moves the court to grant him a new trial, citing as grounds all motions heretofore made by the defendant and all objections overruled. The following supplement the same:

1. The defendant should have been permitted to introduce evidence that he gave things not just to Mr. Blount, but to many others, besides Mr. Oden, and not just the things given him by Mr. Blount. Such evidence was admissible under Rule 404(b) of the *Federal Rules of Evidence* to prove the defendant's state of mind at the time he received the things described in the indictment. The meaning attached to gift giving and gift receiving varies with the circumstances, the person, and the culture; in this country there is no one culture by which all gift giving can be judged. The variety of attitudes towards gift giving and

its meaning is evidenced by a quick foray into the internet. The search terms "culture" and "gift giving" yielded over 26 million hits. Among them was the wikipedia web site, www.http://en.wikipedia.org/wiki/Gift_economy, which surveys the subject. Although many scoff at Wikipedia, this article is well researched. See also C. Otnes & R. Feltramini, *Gift Giving, a Research Anthology*, University of Wisconsin (Popular Press), 1996. Evidence that the defendant gave many of his possessions to a variety of people on a regular basis over the years is evidence of his state of mind and intent when he received things from others; the evidence of his giving should not have been limited to just the things given him by Blount. The scale of the gifts Mr. Blount gave to Mr. Langford was of course impressive, and the government more than harped on it. But the scale of Mr. Langford's gift giving is also impressive, and evidence of the same should have been admitted as counterpoint to the government's evidence; it bore on the central issue of the case.[1]

2. With respect to the "property" branch of the fraud counts, there was no evidence that the defendant obtained or schemed to obtain the alleged

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[1] The defendant has given away clothes, money, and jewelry, including watches, all of a kind with the things given him by Mr. Blount, and much more than he received from Mr. Blount, to many many people. His giving away is comparable in scale to his purchasing and gift accepting.

property by the use of false or fraudulent pretenses, representations or promises. There were none. (Among other things, he obtained the property from Mr. Blount, who professed to not be deceived, and was in fact an alleged co-conspirator).

3. With respect to the "honest services" branch of the fraud counts, there was also no evidence the defendant deprived or intended to deprive the county of his honest services by the use of "false or fraudulent pretenses, representations, or promises." There were none. [2]

4. During closing argument, the government relied on the so-called "side letters" to satisfy the "false or fraudulent pretenses, representations, or promises" element. The government asserted that the defendant concealed the letters. The side letters, however, were not "false or fraudulent pretenses, representations, or promises," by anyone, much less the defendant. He did not direct that they be made. Furthermore, there is no evidence that the defendant did anything to conceal the letters, or even that they were concealed. A few people did not know of them, but others did. This is hardly proof of concealment. The only evidence on the issue of concealment is that they were not concealed. This

[2] The defendant relies on his prior objections and motions regarding the honest services fraud branch of the fraud counts, and reasserts that it should not have been charged in the indictment, or permitted as a basis of conviction in the jury charges.

evidence included the testimony of Mr. Fitzgerald and the fact that the government somehow found the letters, though it failed – conspicuously – to say where).

5. Evidence that the side letters were found in the files of Jefferson County, which would make them a public record, would be exculpatory and should have been disclosed as *Brady* material. The government may assert that the location of the letters was disclosed in the mass of material provided in discovery. The defendant adds to his motion the complaint that the scale of the disclosure, commonly known as a "document dump," was so enormous that it deprived the defendant of the ability to effectively locate exculpatory material. Although a defendant cannot complain about the volume of material he requested, this defendant did not make any blanket request for all material the government obtained. He specifically asked for the categories of material he was entitled to receive.

6. Although the government did not make the argument during summation, the government may assert that the ethics reports supplied the necessary false statement element. The reports, however, were after the fact. Their prior absence cannot be a basis for a false statement, because there was no statement at all. The jury charge stated that a "statement" or "representation" may be false if "it" (the statement or representation) conceals a material fact, but there

has to be some kind of statement or representation actually made. Furthermore, the Ethics statute does not require the report of a loan from an individual, nor does it give authority to the Ethics Commission to add such loans as a requirement, not withstanding the testimony of the representative from the Ethics Commission. *Code of Alabama*, 1975, 36-25-14(b)(7). The defendant reasserts and adds as grounds for a new trial the failure to so charge the jury.

7. The defendant incorporates by reference herein all his arguments, motions and objections regarding the "corruptly" element of Title 18, USC, § 666. The defendant submits that all the evidence proved at most were benefits conferred for the purpose of generating good will, which is not a legal basis for a conviction under this statute. The jury should have been specifically charged that it is not.

8. The relationship between a bribe taker and a bribe give is that of a seller and buyer, where the commodity being sold and bought is influence. Each side to the transaction has his own purpose. (Title 18, United States Code, 666, prohibited conduct by the bribe giver in one subsection, and prohibited conduct by the bribe taker in another subsection). Such a buyer-seller relationship, without more, cannot be a conspiracy.

9. In *United States v. Mercer*, 165 F.3d 1331 (11th Cir. 1999), the Eleventh Circuit, quoting *United States v. Townsend*, 924 F.2d 1385 (7th Cir. 1991) held that "[t]he buy-sell transaction is simply not probative of an agreement to join together to accomplish a criminal objective beyond that already being accomplished by the transaction." In *United States v. Beasley*, 2 F.3d 1551 (11th Cir. 1993), the court held that "[w]here a buyer's purpose is merely to buy and the seller's purpose merely to sell, and no prior or contemporaneous understanding exists between the two beyond the sales agreement, no conspiracy has been shown." See *United States v. Rock*, 370 F.3d 712, 714 (7th Cir. 2004); *United States v. Smith*, 393 F.3d 717, 720 (7th Cir. 2004).

10. Most cases discussing the buy-sell concept are drug cases. In many of those there is more than the simple exchange of money for drugs. This is because the drugs are commonly resold, and there is evidence that the seller is aware that the buyer is in the business of reselling the drugs, which is the crime independent of the instant buy-sell agreement. However,

> [w]hen the sale of some commodity, such as illegal drugs, is the substantive crime, the sale agreement itself cannot be a conspiracy, for it has no separate criminal objective. What is needed for conspiracy in such a case is an agreement to commit some other crime beyond the crime constituted by the agreement itself."

United States v. Dekel, 165 F.3d 826 (11th Cir. 1999). In *Dekel*, the Eleventh Circuit reversed a conspiracy conviction even though the exchanges (sex for drugs) were frequent and even though a party to one side of the exchange asked a party to the other side to find more customers.

11. Where one of two or more objects of a conspiracy is legally insufficient, and where, as here, there is a general verdict, there must be a new trial. *United States v. Pendergraft*, 297 F.3d 1198 (11th Cir. 2002); *Yates v. United States*, 354 U.S. 298 (1957). In *Pendergraft*, the defendants were charged with one count of conspiring to commit extortion, mail fraud and perjury. The court found that under the facts of the case, two of the objects, extortion and mail fraud, were legally insufficient. The court remanded for a new trail because the verdict on the conspiracy count was general. In this case, for the reasons given above, both the fraud and the bribery were legally insufficient to support the conspiracy; but if only one was legally insufficient, the conviction on the conspiracy count should still be reversed.

12. Since the defendant's state of mind was the central issue in the case, the government offered into evidence the records concerning the defendant's credit card applications at National Bank of Commerce under Rule 404(b) of the *Federal Rules of Evidence*. The records should have not been admitted since there

was no proper custodian of records within the requirements of the *Federal Rules of Evidence*, and since the records and their contents constituted hearsay within hearsay. *United States v. Paellulo*, 964 F.2d 193 (3rd Cir. 1992); *United Technologies Corp. v. Mazer,* 556 F.3d 1260 (11th Cir. 2005); *United States v. Robinson*, 239 Fed. Appx. 507 (11th Cir. 2007); *United States v. Walthour*, 202 Fed. Appx. 367 (11th Cir. 2006).

13. In closing argument, the government made statements that can only be interpreted as comments on the failure of the defendant to testify, or more to the point, he asked the jury to speculate on what the defendant might have said if he had testified. [3]

14. With respect to the tax counts, the court charged the jury in substance that the intent of the giver determined whether something conferred on the taxpayer was reportable taxable income or a non-reportable non-taxable gift. In a criminal context, this could not be the basis for a finding of guilt, and a new trial should be granted on those counts.

15. All the counts in the indictment depend to one degree or another on the alleged fraud and bribery. To the extent that the indictment, the

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[3] The prosecutor said, "If a man will lie to his wife to cover up a little bit of spending, what will he do when he presents a defense to a jury when he is charged with a criminal, when he is charged with crimes?"

evidence, and the jury charges related to the alleged fraud and bribery are fatally flawed, so are all the dependent counts.

16. The speed with which the jury returned its verdict indicated almost no deliberation, especially given the fact that they took a smoke break before returning the verdict. Although this may indicate the strength of the case on one side, which the government will certainly argue, it may also indicate flaws in the choice of venue, the jury selection process, the admission of evidence, and the charges. The defendant had moved for a written questionnaire on the grounds that it better revealed possible bias than questioning in open court. The motion was denied. Before the jury was struck, the defendant noted the circumstances, including the publicity and the responses to the jury questions, and moved for a change of venue. The motion was denied. The defendant moved to exclude the references to gambling income in the tax returns and the references by the government to Milton McGregor. The motions were denied. Wherefore, the defendant moves for a new trial, and for a change of venue, on the grounds that the foregoing denied him a fair trial.

17. For the reasons stated above, in particular the failure of evidence to support the allegations of false and fraudulent pretenses and representations and the failure of the evidence to support payments for more than

good will, and on the grounds that the evidence was insufficient to prove each and every element of each and every count, the defendant, SECOND, renews his motion for judgment of acquittal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the above stated date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the United States Attorney.

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