UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v. CASE NO. 3:16-cr-48-J-34JBT
REGINALD FULLWOOD
a/k/a Reggie Fullwood

UNITED STATES' RESPONSE TO
DEFENDANT FULLWOOD'S MOTION TO DISMISS (Doc. No. 46)

Pursuant to rule 3.01, Local Rules (M.D. Fla.) and rule 12(b), Fed. R. Crim. P., the United States, by and through the undersigned Assistant United States Attorneys, hereby responds Mr. Fullwood's Motion to Dismiss Indictment (Doc. No. 46), and says:

Initially, the United States does not agree with the many of the factual representations put forward in Mr. Fullwood's motion, such as his contention that the campaign "contributor[s] received the benefit of the bargain" (Doc. No. 46 at 15), that "in effect, there is no fraud where the alleged 'victim' gets what they bargained for" (Doc. No. 46 at 16) and that "[i]n the real world, it is highly unlikely that was part of any part of any contributors thought process in deciding to contribute to the campaign" (Doc. 46 at 18), that is, that no portion of a contribution would be used for personal business. As reflected in the attached interview reports, Mr. Fullwood is sadly mistaken. However, because those representations are irrelevant to resolving a motion to dismiss,

the United States will not provide detailed refutations of Mr. Fullwood's incorrect allegations. Indeed, the Eleventh Circuit specifically frowns upon proffering evidence in the context of a motion to dismiss. See United States v. Critzer, 951 F.2d 306 (11th Cir. 1992) (reversing dismissal based upon perceived insufficiency of facts proffered by government in response to motion to dismiss).

Nonetheless, before addressing Mr. Fullwood's substantive arguments, a review of the standards applicable to a rule 12(b) motion to dismiss is essential. The defendant, practically ignoring the written allegations of the indictment, invites the Court to consider extrinsic evidence in rendering a decision. The Eleventh Circuit specifically instructs the Court not to do so. Application of the Eleventh Circuit's well settled motion to dismiss standards, accordingly, compels that the Motion to Dismiss be denied.

A. Standards Applicable to a Rule 12(b) Motion to Dismiss.

Rule 12(b)(3)(B) permits a motion to dismiss on the ground of "a defect in the indictment or information." Fed. R. Crim. P. 12(b)(3)(B). Here, defendant asserts that the indictment is defective, claiming a "failure to state an offense." Doc. No. 46, at 2.

In *United States v. Sharpe*, 438 F.3d 1257 (11th Cir. 2006), the Eleventh Circuit provided a thorough summary of the applicable law for this type of motion:

> By now it has become well-established that "[t]he sufficiency of a criminal indictment is determined from

> its face." *United States v. Salman*, 378 F.3d 1266, 1268 (11th Cir.2004) (quoting *United States v. Critzer*, 951 F.2d 306, 307 (11th Cir.1992)). "For an indictment to be valid, it must contain the elements of the offense intended to be charged, and sufficiently apprise the defendant of what he must be prepared to meet." *United States v. Bobo*, 344 F.3d 1076, 1083 (11th Cir.2003) (internal quotation marks omitted). "An indictment not framed to apprise the defendant with reasonable certainty, of the nature of the accusation against him is defective, although it may follow the language of the statute." *Id*. (internal quotation marks omitted). "Furthermore, if the indictment tracks the language of the statute, it must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offense, coming under the general description, with which he is charged." *Id*. (internal quotation marks omitted).
>
> In ruling on a motion to dismiss for failure to state an offense, a district court is limited to reviewing the face of the indictment and, more specifically, the language used to charge the crimes. *See United States v. Critzer*, 951 F.2d 306, 307 (11th Cir.1992). It is well-settled that "a court may not dismiss an indictment . . . on a determination of facts that should have been developed at trial." *United States v. Torkington*, 812 F.2d 1347, 1354 (11th Cir.1987).

Id. At 1263

B. The Indictment Properly Alleges a Wire Fraud.

Mr. Fullwood spends twenty pages attempting to persuade this Court to dismiss the criminal indictment against him. He accepts, as is required at the Motion to Dismiss phase, that the facts alleged in the Indictment are true. (Doc. No. 46 at 5). He accepts that the criminal statute with which he is charged – the wire-fraud statute – is "elastic." (Doc. No. 46 at 2). He also accepts that the wire-

fraud statute punishes conduct where the defendant both deceives and defrauds victims by not providing the victim the "benefit of the bargain." (Doc. No. 39 at 14). And he accepts that Florida law governs strictly how campaign contributions may be spent, including a prohibition on using campaign contributions for personal business. What Mr. Fullwood fails to accept is that, given this landscape, the Government has adequately drafted an indictment sufficient to state a case for wire fraud. An argument that Mr. Fullwood does not like the evidence or the government's theory is insufficient to state a basis for dismissing the case. As such, this Court should deny Defendant's motion.

As this Court is well-familiar, "[a]n indictment is sufficient if it: (1) presents the essential elements of the charged offense, (2) notifies the accused of the charges to be defended against, and (3) enables the accused to rely upon a judgment under the indictment as a bar against double jeopardy for any subsequent prosecution for the same offense." *United States v. Steele*, 178 F.3d 1230, 1233-34 (11th Cir. 1999) (citation omitted). As the Eleventh Circuit has taken pains to emphasize, a district court's inquiry at the Motion to Dismiss phase is narrow: "Under Fed. R. Crim. P. 12(b) an indictment may be dismissed where there is an infirmity of law in the prosecution; a ***court may not dismiss an indictment, however, on a determination of facts that should have been developed at trial***." *United States v. Torkington*, 812 F.2d 1347, 1354 (11th Cir. 1987) (emphasis added); *see also United States v. deVegter*, 198 F.2d 1324, 1327 (11th Cir. 1999). Put another way, "[a]n indictment need do little more than track

the language of the statute charged to be sufficient." *United States v. Adkinson*, 135 F.3d 1363, 1375 n. 37 (11th Cir. 1998).

With this framework, we turn to the Indictment – the relevant document in analyzing Defendant's motion to dismiss.[1] The Indictment alleges ten separate counts of wire fraud. The Indictment alleges that Defendant failed to file income tax returns in 2010, 2011, 2012, and 2013. *Id.* at 6-9. In his Motion to Dismiss, Defendant does not address the four counts related to the failure to file income tax returns. Presumably, Defendant does not contest the sufficient pleadings of those counts. As such, the United States does not address those counts in this response.

Focusing on the wire fraud counts, the government needs to prove four elements to prevail: (1) that the defendant voluntarily and intentionally devised or participated in a scheme to defraud another out of money; (2) that the defendant did so with the intent to defraud; (3) that it was reasonably foreseeable that interstate wire communications would be used; and (4) that interstate wire communications were in fact used. *See, e.g., United States v. Bradley*, 644 F.3d 1213 (11th Cir. 2011). The Government has alleged each of these four elements in its Indictment. Because the Defendant does not challenge the interstate nexus

[1] Defendant concedes that the Indictment, and the Indictment alone, is the relevant document to consider in analyzing the Defendant's motion to dismiss. *See* Doc. 46 at 10. Yet, despite that recognition, Defendant spends multiple pages talking about purported inconsistencies in the Government's positions at various times throughout the proceedings. Suffice to say, for purposes of the Defendant's Motion to Dismiss, the only relevant document is the Indictment.

of the Indictment, the Government does not discuss these elements in detail. However, the Government has adequately alleged a nexus to interstate wire, radio, or television communications. *See* Doc. 1 at 2-6.

With respect to the other elements, the Indictment sufficiently alleges the requisite elements sufficient to state an actionable wire fraud case. The Indictment alleges that the Defendant maintained the "Reggie Fullwood Campaign." *Id*. at 2. It further alleges that the Defendant maintained a business bank account at Atlantic Coast Bank in which he deposited campaign funds from campaign contributors. *Id.* It further alleges that Fullwood was the Deputy Treasurer of his campaign. *Id.* The indictment then alleges that from at least September 2010 and continuing until December 2011, the Defendant defrauded campaign contributors and falsely obtained "money and property by means of materially false and fraudulent pretenses, representations, and promises." *Id.* at 4.

The Indictment spells out this scheme and artifice. Specifically, the Indictment alleges that Fullwood "would solicit and cause to be solicited individuals and entities to contribute money to the 'Reggie Fullwood Campaign' for the stated purpose of supporting his election and reelection to the Florida House of Representatives." *Id.* The Indictment alleges that these contributions were "fraudulently and unlawfully [] transferred from the Reggie Fullwood Campaign account [] into the Rhino Harbor bank account [] for personal expenses unrelated to this campaign to be elected to the Florida House of Representatives." *Id.* Continuing, the Indictment alleges that Fullwood would use these unlawfully

obtained funds "to pay personal expenses or withdraw cash at various locations, including restaurants, grocery stores, retail stores, jewelry stores, florists, gas stations, ATMS for cash withdrawals, and liquor stores." Id. Finally, the Indictment alleges that Fullwood would "submit or cause to be submitted false and fraudulent campaign expenditure reports to the State of Florida which included inflated and/or non-existent campaign expenses in order to hide and conceal" his scheme. Id. at 5.

This is more than sufficient to state a possible wire-fraud conviction. As this Court knows well, the wire-fraud statute punishes any scheme or artifice to defraud. *United States vs. Takahalov*, _ F.3d _, 2016 WL 3683456 (11th Cir. July 11, 2016). The meaning of the phrase "scheme to defraud" is not defined by statute; rather, it has been "judicially defined." *United States v. Pendergraft*, 297 F.3d 1198, 1208 (11th Cir. 2002). And that definition is a broad one, "broad[er] ... than the common law definition of fraud." *Id*. It is a "reflection of moral uprightness, of fundamental honesty, fair play and right dealing in the general and business life of members of society." *Gregory v. United States*, 253 F.2d 104, 109 (5th Cir. 1958).

With this legal framework, the Indictment is sufficient to plead allegations of wire fraud. The Government has alleged that Mr. Fullwood unlawfully "solicit[ed] and cause[d] to be solicited individuals and entities to contribute money to the 'Reggie Fullwood Campaign' for the stated purpose of supporting his election and reelection to the Florida House of Representatives." Doc. 1 at 4. The Government

then alleged that Mr. Fullwood took that money and used it for unlawful and illegal purposes – e.g., personal expenses. These allegations fall within the ambit of the wire-fraud statute – which prohibits and punishes defendants who deprive someone (campaign donors) of something of value (their campaign contributions) by trick, deceit, or overreaching (lying about the purpose of their donations).

None of Mr. Fullwood's arguments to the contrary are persuasive. He argues first that, once a campaign contributor donates to a candidate, the contributor loses a property interest in his contribution. *See* Doc. 46 at 7-9. Maybe so. But this argument misses the point. The relevant inquiry is not what happens to a victim's property ***after*** he is defrauded – rather, the proper inquiry is whether the victim was defrauded ***into*** losing his property. Put another way, in assessing the viability of the government's theory, this Court should assess whether the Defendant defrauded contributors into giving money at all. That the victims lost a property interest in their money after they had already made a donation is irrelevant.

He argues next that the Indictment is a thinly veiled "honest services" theory case. *Id.* at 9. It is unclear why Mr. Fullwood believes this is an honest services case. The Government has repeatedly denied that it intends to pursue an honest services theory. And, the Government is making no allusions to the services that Mr. Fullwood did or did not provide as a State Representative. Rather, as the Indictment alleges, from September 2010 until December 2011, Mr. Fullwood defrauded campaign donors into donating money purportedly to be used in an

election. These allegations have nothing to do with Mr. Fullwood depriving constituents of his honest services. Rather, this has everything to do with wire fraud.

Next, Mr. Fullwood takes the Government to task for the use of "embezzled" on page 5 of the Indictment. It is peculiar that this one word has attracted as much attention as it has. This one word was the subject of the Defendant's Motion for a Bill of Particulars. Doc. No. 19. After a hearing on this one word, the Court granted this Motion. Doc. No. 23. The Government responded to the Court's order. Doc. No. 25. Here, again, Defendant raises the specter of the word "embezzled." It is surprising that Defendant has devoted so much attention to this word given that it appears once in the Indictment, there is no substantive count related to embezzlement, and it has already been the source of much litigation. As the Eleventh Circuit has emphasized, "[l]inguistic precision is not required in an indictment." *deVegter*, 198 F.3d at 1329. In any event, as the Government articulated in its Indictment and at subsequent hearings, the allegations are that Mr. Fullwood defrauded campaign donors into making campaign contributions. That – in and of itself – is sufficient to state an actionable wire fraud count. The repeated refrains to embezzlement are immaterial to the actual counts charged.

Next, Mr. Fullwood suggest that the *Takahalov* and *United States v. Starr* opinions compel this Court to dismiss this Indictment. Doc. 46 at 10-12. It is odd that he cites these cases in support of his Motion. These cases do not stand for the proposition that a wire fraud indictment should be dismissed prior to going to a

jury. Rather, *Takahalov* was about the sufficiency of jury instructions and *Starr* was about the sufficiency of evidence.

Putting aside the lack of precedential value of those cases for the instant motion, if anything, these cases support the Government's theory. In an excerpted portion of *Takahalov*, for example, Mr. Fullwood highlights the relevant language: "if there is no intent to harm, there can only be a scheme to deceive, but not one to defraud and the harm contemplated must affect the very nature of the bargain itself." *Id.* at 13. Here, the Government's entire contention is that Mr. Fullwood intended to harm his victims – the campaign donors – by deceiving them about the purpose of their contribution. By not using the donors' moneys in the ways that he promised he would, Mr. Fullwood precisely affected the very nature of the bargain itself.

At its core, Mr. Fullwood's argument boils down to the contention that there can be no actionable wire fraud since campaign contributors got the benefit of the bargain in contributing to his campaign – even if Fullwood spent the contributions on expenses wholly unrelated to the campaign. Without any authority, Mr. Fullwood posits that "[i]n the real world, it is highly unlikely that" any campaign contributor thought that Mr. Fullwood would follow Florida election laws. Doc. No. 46 at 17. Not only is this position unsupported, it is a question for the jury to decide after hearing the evidence. And, to be sure, even if this Court were to decide the issue, it should decide it with precisely the opposite conclusion than that suggested by Mr. Fullwood. As the attached interview reports suggest, campaign donors

contributed to Mr. Fullwood's campaign in hopes that he would use the money to get elected to state office. *See* Exhibit A. Campaign donors did not give money to Mr. Fullwood to spend however he wished; if they wanted to do to that, they could have. Instead, they gave money to his campaign account to be used by the campaign for campaign-related expenses. In fact, as the interviews reflect, the donors would not have given money to Mr. Fullwood's campaign had they known he was not going to use it for campaign-related activities. *Id.*

Conclusion

In sum, the Indictment adequately alleges facts sufficient to state ten counts of wire fraud. By alleging that Mr. Fullwood defrauded campaign contributors into making donations that they otherwise would not have made, the Government has stated a viable wire fraud theory. Mr. Fullwood's motion is due to be denied and the Government should be permitted to present its evidence to a jury.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Robert Stuart Willis, Esq.

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