No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL GREGORY HUBBARD, *Petitioner*,

v.

STATE OF ALABAMA, *Respondent*.

Petition for Writ of Certiorari to
the Supreme Court of Alabama

PETITION FOR WRIT OF CERTIORARI

Sam Heldman
The Gardner Firm, PC
2805 31st St. NW
Washington DC 20008
(202) 965-8884
sheldman@gmail.com
Counsel of Record

Joel E. Dillard
David McKnight
Dillard, McKnight
James & McElroy
Post Office Box 530333
Birmingham, Alabama 35253
(205) 271-1100

R. Lance Bell
Trussell Funderburg
Rea & Bell PC
1905 First Avenue South
Pell City, Alabama 35125
(205) 338-7273

Question Presented

Did the Supreme Court of Alabama deprive Petitioner of due process of law, when it affirmed his conviction based on (a) first-impression interpretations of criminal statutes that a reasonable person would not have known to be the law, and (b) a factual theory (that Petitioner took certain official actions in exchange for payment) that the prosecutors had declared at trial to be *irrelevant* to their case?

Parties to the Proceeding Below

The parties are listed in the caption of the case.

Related Proceedings

This case was tried in the Circuit Court of Lee County, Alabama, as *State of Alabama v. Michael Gregory Hubbard,* No. CC-2014-565. Judgment was entered in the Circuit Court September 6, 2016.

The case was timely appealed to the Alabama Court of Criminal Appeals, as *Michael Gregory Hubbard v. State*, No. CR-16-0012. The Court of Criminal Appeals issued its decision on August 27, 2018, and denied rehearing on September 28, 2018.

The Supreme Court of Alabama granted review in *Ex parte Michael Gregory Hubbard*, No. 1180047. That Court issued its decision on April 10, 2020, and denied rehearing on August 28, 2020.

Table of Contents

Table of Authorities

Cases

Federal Constitution and Laws

State laws and other state authorities

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL GREGORY HUBBARD, *Petitioner*,

v.

STATE OF ALABAMA, *Respondent*.

Petition for Writ of Certiorari to
the Supreme Court of Alabama

PETITION FOR WRIT OF CERTIORARI

Petitioner Michael Gregory Hubbard respectfully prays that a writ of certiorari issue to review the decision of the Supreme Court of Alabama, *Ex parte Hubbard*, ___ So.3d ___ (Ala. 2020) (No. 1180047).

Opinions Below

The opinion of the Supreme Court of Alabama, to be reported at ___ So.3d ___, is reproduced in the Appendix at 1a-99a. The order of the Supreme Court of Alabama denying rehearing is reproduced in the Appendix at 260a. The opinion of the Alabama Court of Criminal Appeals, to be reported at ___ So.3d. ___, is reproduced in the appendix at 100a-259a. The Circuit Court of Lee

County, Alabama, did not issue an opinion regarding the denial of Petitioner's renewed motion for judgment of acquittal.

Jurisdiction

This Court has jurisdiction under 28 U.S.C. § 1257. The Supreme Court of Alabama issued its decision on April 10, 2020, and denied Petitioner's timely application for rehearing on August 28, 2020.

Statues and Constitutional Provision Involved

Section 1 of the Fourteenth Amendment to the United States Constitution provides, in pertinent part, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; …."

Pertinent Alabama statutes, including Ala. Code §§ 36-25-1(34)b.10,-1.1, -5(a), -5(c), -5.1(a), and -7(b), are set forth in the appendix at 261a-263a.

Statement

Mike Hubbard was Speaker of the Alabama House of Representatives. Like most of his colleagues in the Legislature, *see Opinion of Justices No. 317*, 474 So.2d 700, 704 (Ala. 1985), Hubbard also had a career outside the Legislature. That is because Alabama, like many states, has chosen to have a citizen-

legislature rather than a legislature made of full-time officials.

Hubbard found himself in the sights of a prosecutor who (according to the undisputed evidence of record) told a colleague that he had "determined [that Hubbard] was a bad guy and that while he had -- may not have committed crime, he had done everything possible to look guilty," and so the prosecutor had decided to "tie a noose around [Hubbard's] [expletive] neck and cinch it down until he is grasping for [expletive] air, and then perhaps then [Hubbard] would plead guilty and resign."

Hubbard was indicted on 23 counts.

Importantly, Hubbard was **not** charged with soliciting or receiving anything in exchange for (or for the purpose of corruptly influencing) his official actions, under Ala. Code § 36-25-7(b). Alabama has strong law on that subject, and *Hubbard did not even allegedly violate it.* The prosecutors repeatedly noted that Hubbard was not charged with any *quid pro quo*. And indeed, even beyond that, they objected at trial *on relevance grounds* to a question about whether he had ever engaged in a *quid pro quo* for any official action or inaction.[1] Thus the prosecutors made clear that none of the charges

[1] Q: Okay, Do you know of any individual or any group or anybody that ever paid the Speaker any money on a quid pro quo basis to get him to do certain action or withhold certain action?
MR. DUFFY: Objection, Your Honor, as to relevance.
THE COURT: Overruled. He can ask if we knows about it. [footnote continues]

were based on any *quid pro quo* factual theory; any such thing was simply *irrelevant* to the State's theory of the case. So, Hubbard then knew for certain that he did not have to defend himself against any such factual theory.

The jury acquitted Hubbard on eleven counts and convicted him on twelve. He was sentenced to years in prison, and has recently begun serving his sentence. After the state-court appellate process, only six counts remain; the other six counts of conviction were reversed based on insufficiency of the evidence (one by the Alabama Court of Criminal Appeals, and five more by the Supreme Court of Alabama).

Hubbard raised the due process issue, regarding the requirement that criminal statutes must give fair notice of what they prohibit, in the trial court. For instance, in his renewed motion for judgment of acquittal or for new trial, he repeatedly returned to that argument and cited this Court's decisions in *Johnson v. United States*, 576 U.S. 591 (2015) and *United States v. Batchelder*, 442 U.S. 114 (1979).

Hubbard then pressed his federal due process argument in the Court of Criminal Appeals. Among the issues he presented was "whether, consistent with federal and state constitutional requirements of due process, Hubbard

---

MR. DUFFY: He hasn't been charged with a quid pro quo, Your Honor.
THE COURT: Well, I understand. Y'all can ask him that on redirect. But he can answer that.

can be held criminally liable based on answers to [questions of statutory interpretation] that were not clear at the time of his actions." He repeatedly relied on this Court's cases including *Johnson*.

Hubbard continued to press his federal due process argument in the Supreme Court of Alabama. In his state-court petition for certiorari, at p. 1, he pressed "the question whether a liability-expanding interpretation of these provisions, adopted as a matter of first impression, violates Hubbard's state and federal due process rights, see *Johnson v. United States,* 135 S.Ct. 2551 (2015)." In his briefing in the state Supreme Court he repeatedly urged the same point. For instance, in his opening brief at p. 4, one of the issues he presented was "whether, consistent with federal and state constitutional requirements of due process as well as settled principles of statutory interpretation, Hubbard can be held criminally liable based on answers to [first-impression statutory interpretation] questions that were not clear at the time of his actions." He argued (at p. 26 of that same brief) that "As to due process, it is well settled (under both the State and Federal Constitutions) that no one may be convicted where it was not clear, when he acted, that such an act was a crime," and cited *Johnson*, *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939), *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926), and *Bouie v. City of Columbia*, 378 U.S. 347 (1964). That theme was returned to, throughout

his briefing.

Hubbard noted throughout his appellate briefing that he was not charged with any *quid pro quo* and indeed that the prosecutors had taken any factual *quid pro quo* theory off the table by emphasizing in open court that any question about whether he had engaged in any *quid pro quo* was *irrelevant* to their case. When the Supreme Court of Alabama then issued its opinion suggesting that a factual theory of *quid pro quo* seemed to be the basis for affirmance of some counts, Hubbard noted in his rehearing application that this was a violation of his federal due process rights.

Reasons for Granting the Petition

This Petition does not ask the Court to break new ground. Instead it asks the Court to underscore the importance of due-process principles – including the principle of fair warning in criminal statutes, which this Court has recently and repeatedly re-emphasized as to federal criminal statutes – by applying those principles to a state-court criminal proceeding.

The first relevant principle is the due process principle of "fair notice" or "fair warning." A statute creating criminal penalties is unconstitutional if it does not give a reasonable person fair warning of what is proscribed. *See*, *e.g.*, *United States v. Davis*, ___ U.S. ___, 139 S. Ct. 2319, 2325 (2019); *Sessions v. Dimaya*, ___ U.S. ___, 138 S. Ct. 1204, 1225 (2018). The corollary is that it is

unconstitutional for a court to *read* a criminal statute as proscribing something where the statute itself did not give fair warning of it. As reflected in *Dimaya*, 138 S.Ct. at 1227-28, the "fair warning" principle lives alongside the principle that it must remain the province of legislatures, rather than courts or prosecutors, to define the scope of criminal laws with precision that can be understood in advance.

The other relevant principle is that an appellate court may not, consistent with due process, affirm a conviction based on a theory that is not alleged in the indictment and that is different from the theory actually tried to the jury by the prosecution. *Dunn v. United States*, 442 U.S. 100, 107 (1979) This principle has its roots in cases such as *Cole v. Arkansas*, 333 U.S. 196, 201 (1948) ("No principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal."). It is part of the "broader premise that has never been doubted in our constitutional system: that a person cannot incur the loss of liberty for an offense without notice and a meaningful opportunity to defend." *Jackson v. Virginia*, 443 U.S. 307, 314 (1979). As noted above in the Statement, the prosecutors made clear at trial not only that Hubbard was not charged with any *quid pro*; beyond that,

they said, whether there was any *quid pro quo* was wholly irrelevant to their case. Under this fundamental principle of fairness, that view of the case had to remain constant through the appellate process.

On each remaining count in the case, Hubbard's conviction and the affirmance by the Supreme Court of Alabama violate one or both of these principles.

1. Counts 6 and 10 arose under Ala. Code § 36-25-5.1(a), which provides in pertinent part that "no public employee or public official or family member of the public employee or family member of the public official shall solicit or receive a thing of value from a lobbyist, subordinate of a lobbyist, or principal." Because many public offices (including the office of legislator) are part-time, and because the prohibition applies to family members as well, the statutory scheme includes an important exception so that such people can have jobs even if they involve working for a principal (i.e., an entity that retains a lobbyist). It comes in the definition of "thing of value":

> The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof: …
>
> … Compensation and other benefits earned from a non-government employer, vendor, client, prospective employer, or other business relationship in the ordinary course of employment or non-governmental business activities under circumstances which make it clear that the thing is provided for

> reasons unrelated to the recipient's public service as a public official or public employee.

Ala. Code § 36-25-1(34)b.10.

What does it mean for such a business relationship to exist "under circumstances which make it clear that" the compensation "is provided for reasons unrelated to the recipient's public service as a public official?" The Alabama Ethics Commission – the body tasked with the primary authority of interpreting the Ethics Law – has wrestled with this for years and has brought little clarity to the table. Even years after Hubbard acted, the Ethics Commission was still wrestling to put together a vague, multi-factor analysis of the "compensation" exception, an analysis under which no one could possibly know in advance whether he was on safe ground taking a job. See Advisory Opinion No. 2016-27[2] (opinion on the "compensation" exception, rendered years after Hubbard acted, setting out a non-exhaustive 10-factor list of things to be "consider[ed]," with each of those 10 containing various sub-parts, while emphasizing that the opinion "is not a checklist that if satisfied gives any legal protection based on the offer or receipt.").

The Supreme Court of Alabama, though, thought that interpreting this compensation exclusion and its proviso was simple: just repeat the words of

[2] <http://ethics.alabama.gov/docs/pdf/AO2016-27.pdf.pdf>

the statute. "[W]e hold that, to meet this element of the compensation exclusion, the compensation must be provided solely for reasons unrelated to the official's or employee's public service, and that unrelatedness must be clear from the circumstances of the compensation." [41a-42a]. And so, the majority held, Hubbard was ineligible for the compensation exclusion because his status as Speaker had something do with why he was a useful consultant to the two companies at issue in Counts 6 and 10: for instance, he could get them introductions to other House Speakers or officials in other states. [43a-44a].[3]

The dissent, by contrast, agreed with Hubbard specifically about the apparent meaning of the phrase "public service":

> I read the statute's reference to "public service" as the exercise of an official's governmental authority. In my opinion, compensation under the Ethics Code is not a "thing of value" unless it is given in exchange for the recipient's use of actual governmental power. To hold otherwise would appear to criminalize legitimate business arrangements in which part-time legislators and other part-time elected officials routinely engage.

[88a-89a (Sellers, J., dissenting)].

Hubbard did not have fair warning that the majority's view was how the

---

[3] Hubbard had pointed out the astounding results that would come from a broad reading of the prohibition. For instance, it would seem that a Professor of Engineering at Auburn or the University of Alabama would commit a felony by providing consulting services to, or testifying as an expert witness for, Alabama Power Company or any of the hundreds of other companies that retain lobbyists in Alabama. The Court did not deny this, or deny that such an application of the statute would be a stunning surprise.

statute must be read, or fair warning that the dissent was wrong. He did not have fair warning that doing out-of-state networking, with contacts that he made by virtue of being Speaker, was a violation of the law.[4]

2. Count 11 arose under Ala. Code § 36-25-5(a), which provides:

> No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law.

The facts that the Alabama Supreme Court relied on to find a violation of this section were, in summary [52a], that Hubbard had a fixed-retainer consulting contract with a cup-manufacturing company ("Capitol Cups") based in his legislative district; that he wrote to Publix Supermarkets asking Publix to meet with Capitol Cups; and that he did so on his official House letterhead signing himself as Speaker, and not mentioning that he was a paid consultant.

Hubbard pointed out to the Court that there was *no* evidence that his writing this letter increased his personal wealth whatsoever – he was on a fixed

---

[4] The majority also indicated [44a] that it was pertinent to this Count, that Hubbard voted for a measure that would benefit APCI while he had the consulting contract with APCI. But again, no such theory was properly at issue. Hubbard had been charged in Count Five with voting on that measure under a conflict of interest; but as the Court of Criminal Appeals recognized, he simply had no conflict under the operative statutory definition. He was not charged with having been paid to make that vote; and as seen above, the prosecutors said that any *quid pro quo* was wholly irrelevant to their case.

retainer, and there was no evidence that his writing that letter would increase his compensation or increase the duration of his consulting contract. Thus even if he used his official position in this regard, he did not use it "to obtain personal gain for himself or herself" as the statute and the charge required.

The Supreme Court of Alabama rejected this argument by making a novel and surprising holding of law as a matter of first impression: that the statutory language is not "limited to conduct used to obtain a contract or to increase compensation," but that is also "includes conduct in performance of a fixed-compensation contract." The Court said that the statutory language includes conduct in performance of a fixed-compensation contract because such performance *might* affect the length or renewal of the contractual relationship. [49a-50a].

Whatever else might be said about the merits of that interpretation, it certainly was not plain. No one had fair warning that doing things "to obtain personal gain" includes simply performing under a fixed-compensation contract. And, under the statute, it was *not* unlawful for Hubbard to use his office (if he did so) to obtain gain for Capitol Cups. That is, § 36-25-5(a) also forbids use of one's office to obtain gain for "any business with which the person is associated" – but the Ethics Law defines "business with which the person is associated," in § 36-25-1(2), in a way that does not include having a consulting

contract with the company. So, again, the statute did not give Hubbard fair warning that this conduct – which did not and would not affect his income – was criminal.

3. Count 14 arose under Ala. Code § 36-25-5(c), which provides in pertinent part:

> No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2 which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. ..

This count was based on the fact that Hubbard had a staff member make some calls to break a bureaucratic logjam that was inexplicably holding up the final issuance of a patent that had been approved. The patent belonged to another company headed by Hubbard's constituent Robert Abrams, who also owned Capitol Cups.

As the plurality opinion of the Supreme Court of Alabama noted [56a], Hubbard contended that there was no evidence that this routine and small bit of constituent service (in the words of the statute) "would materially affect his … financial interest"; there was no evidence that the longevity of the Capitol Cups consulting contract would be affected in the future by this little bit of

routine constituent service. Abrams had testified without contradiction, as a witness in the prosecution's case-in-chief, that Capitol Cups retained Hubbard as a consultant because of his connections in the sports world; as Abrams said, "the Legislature had nothing to do with it."

The plurality stretched the meaning of that phrase, "would materially affect his … financial interest" beyond anything of which fair warning had been given; and in doing so, the plurality relied on a "*quid pro quo*" theory that the prosecution had (as discussed above) declared irrelevant to its case. The plurality pointed to the testimony that Hubbard mentioned to his staff member that he had "100,000 reasons to get this done," a number corresponding to the amount of payment he had, by that point, received under the Capitol Cups consulting contract. [57a-58a]. But in what sense would that, if true, mean that *doing this constituent service* would "materially affect his … financial interest"? The plurality explained its conclusion this way:

> [T]he jury could reasonably have concluded that Hubbard saw the CSP patent work as directly connected to his Capitol Cups payments. It was not necessary for the State to show that the patent work convinced Capitol Cups to hire Hubbard initially or that the patent work actually affected the longevity of that relationship. Rather, to overcome the legal implications of separate corporate identities, it was sufficient for the State to show that Hubbard understood the CSP patent work to be on the basis of, and in furtherance of, his payments from Capitol Cups.

[57a-58a]. Again, the plurality opinion both relies on an *quid pro quo* factual

theory (that Hubbard did constituent service for one company because he was paid under a consulting contract with another related company), and relies on an unnatural and unpredictable reading of the phrase "would materially affect his … financial interest."

4. Counts 12 and 13 arose under Ala. Code § 36-25-1.1, which provides:

> No member of the Legislature, for a fee, reward, or other compensation, in addition to that received in his or her official capacity, shall represent any person, firm, corporation, or other business entity before an executive department or agency.

These counts, too, had to do with minor constituent service for another corporation headed by the entrepreneur who owned Capitol Cups. The charge in these counts was that Hubbard secured meetings for that company with certain state executive officials. [59a].

The plurality of the Court agreed that the word "for," in the statute, meant that there had to be an "exchange" of money for representation – with the example of "$10 for a hat" [61a], which plainly means a literal exchange of this for that, *quid pro quo*. Yet, as we have seen, the prosecution charged no *quid pro quo* and declared it irrelevant whether there was a *quid pro quo*. The plurality then seemed to weaken the word "for" beyond recognition, making it no longer require an actual exchange but merely proof of a "causal" connection [62a] which seemingly would be met by the idea that Hubbard did this constituent service because (for instance) he was thankful for the consulting

contract with Capitol Cups [62a].

If the plurality meant to suggest that Hubbard was actually paid "for" doing this constituent service, in the ordinary meaning of that word "for," then once again the plurality affirmed a conviction based on the *quid pro quo* theory that the prosecution had disavowed as irrelevant to its case. If the plurality instead meant that being motivated merely by appreciativeness for the consulting contract would be enough to count as the requisite "causal" connection, then the plurality adopted an unexpectable reading of the statute and Hubbard had no fair warning.

The prosecution and conviction of Mike Hubbard, and the affirmance of some convictions by the state appellate courts, are the archetypal example of what this Court's due process precedents are meant to prevent.

He was targeted by a prosecutor who, according to undisputed testimony, told a colleague that he had "determined [that Hubbard] was a bad guy and that while he had -- may not have committed crime, he had done everything possible to look guilty," and so the prosecutor had decided to "tie a noose around [Hubbard's] [expletive] neck and cinch it down until he is grasping for [expletive] air, and then perhaps then [Hubbard] would plead guilty and resign."

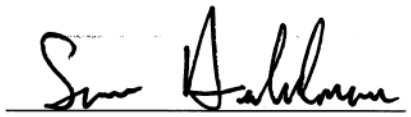
He was, undisputedly, overcharged and charged under statutes that simply did not apply. The Court of Criminal Appeals recognized that the law charged in Count 5 simply did not apply because Hubbard had no conflict of interest under the statutory definition. The Supreme Court of Alabama recognized that five more counts were baseless under the law and the undisputed facts. Yet the state appellate courts did not recognize that the same was true as to all the remaining counts – so long as one remembers the due process requirement of "fair notice" or "fair warning," and so long as one does not change the factual theory on appeal.

Hubbard is not asking this Court to tell Alabama's courts what Alabama law means. On a prospective basis, the Alabama courts can interpret the laws as they see fit. What is impermissible, and unconstitutional, is to convict and imprison Hubbard – and to affirm the convictions as a matter of first-impression statutory construction – for doing things that were not clearly prohibited by the laws in question.

Conclusion

Petitioner Mike Hubbard respectfully requests that the Court hear his case.

Respectfully submitted,



Sam Heldman
The Gardner Firm, PC
2805 31st St. NW
Washington DC 20008
(202) 965-8884
sheldman@gmail.com
Counsel of Record

Joel E. Dillard
David McKnight
Dillard, McKnight
James & McElroy
Post Office Box 530333
Birmingham, Alabama 35253
(205) 271-1100

R. Lance Bell
Trussell Funderburg
Rea & Bell PC
1905 First Avenue South
Pell City, Alabama 35125
(205) 338-7273

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL GREGORY HUBBARD, *Petitioner*,

v.

STATE OF ALABAMA, *Respondent*.

Petition for Writ of Certiorari to
the Supreme Court of Alabama

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Sam Heldman
The Gardner Firm, PC
2805 31st St. NW
Washington DC 20008
(202) 965-8884
sheldman@gmail.com
Counsel of Record

Joel E. Dillard
David McKnight
Dillard, McKnight
James & McElroy
Post Office Box 530333
Birmingham, Alabama 35253
(205) 271-1100

R. Lance Bell
Trussell Funderburg
Rea & Bell PC
1905 First Avenue South
Pell City, Alabama 35125
(205) 338-7273

Table of Contents

Appendix

Appendix A: Opinion of Supreme Court of Alabama

REL: April 10, 2020

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1180047

Ex parte Michael Gregory Hubbard

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS

(In re: Michael Gregory Hubbard

v.

State of Alabama)

(Lee Circuit Court, CC-14-565; Court of Criminal Appeals, CR-16-0012)

1180047

PARKER, Chief Justice.

Michael Gregory Hubbard was charged with 23 counts of violating Alabama's "Code of Ethics for Public Officials, Employees, Etc.," §§ 36-25-1 to -30, Ala. Code 1975 ("the Ethics Code").[1] The Lee Circuit Court entered a judgment on a jury verdict convicting Hubbard on 12 of the 23 counts. Hubbard appealed to the Court of Criminal Appeals, which affirmed the convictions on 11 counts and reversed the conviction on 1 count. Hubbard petitioned this Court for certiorari review of the 11 counts affirmed by the Court of Criminal Appeals, and we granted review. For the reasons below, we affirm the judgment of the Court of Criminal Appeals as to Hubbard's convictions on six counts, and we reverse as to the convictions on five counts because they were based on insufficient evidence or incorrect interpretations of the Ethics Code.

I. Factual Background

In 1994, Hubbard formed Auburn Network, Inc. ("Auburn Network"), a radio network that held the media rights for

[1]The Ethics Code has been amended several times during the last several years. None of the sections at issue in this case, however, has been amended in any relevant way.

Auburn University athletics. Hubbard later sold the broadcasting/media portion of Auburn Network to International Sports Properties, Inc. ("ISP"), and stayed on as president of Auburn ISP Network. Hubbard received a salary from ISP but also continued to operate what remained of Auburn Network.

In 1998, Hubbard was elected to the Alabama House of Representatives. He was elected minority leader of the House in 2004 and then was elected chairman of the Alabama Republican Party. As chairman, he helped orchestrate the Republican takeover of both chambers of the Alabama Legislature in the 2010 election. That statewide effort was conducted on a platform dubbed "The Handshake with Alabama," which included a promise of ethics reform.

Thus, shortly after the 2010 election, the Governor called a special session of the new Republican-majority legislature to reform the Ethics Code. At the beginning of the session, Hubbard was elected Speaker of the House. Under Hubbard's leadership, the legislature revised the Ethics Code to, among other things, tighten restrictions on gifts to public officials and employees from lobbyists and their employers.

Soon thereafter, Hubbard began experiencing personal financial difficulties. In January 2011, ISP was purchased by International Management Group, which laid off Hubbard two months later. Hubbard began looking for ways to replace his lost income. In particular, he began seeking clients with which he could contract as a consultant. To that end, he enlisted the aid of Will Brooke, an executive of an asset-management firm and the then chairman of the Business Council of Alabama ("the BCA"). Brooke was ultimately unable to find any clients for Hubbard, but Hubbard eventually obtained several clients through other means.

In 2012, Hubbard experienced further difficulties when Craftmaster Printers, Inc. ("Craftmaster"), a printing company in which he held a 25 percent interest, was teetering on the edge of financial collapse. Hubbard again reached out to Brooke, who crafted a turnaround plan for the company. To implement the plan, Hubbard located eight investors who each contributed $150,000 in exchange for Craftmaster stock.

In 2014, Hubbard was indicted on 23 counts of violating the Ethics Code. After a 4-week jury trial, he was convicted on 12 of those counts. The trial court ordered that some of

his sentences were to run concurrently and some consecutively, for an effective total of 4 years in prison and 16 years of probation, and he was ordered to pay various fines.

On appeal, the Court of Criminal Appeals affirmed Hubbard's convictions on 11 counts and reversed the conviction on 1 count. Hubbard v. State, [Ms. CR-16-0012, Aug. 27, 2018] ___ So. 3d ___, ___ (Ala. Crim. App. 2018). Hubbard petitioned this Court for certiorari review of the 11 affirmed counts, and we granted review.

II. Discussion

A. Craftmaster investments and Brooke's assistance (counts 16-19, 23)

Hubbard was convicted on five counts of soliciting or receiving a thing of value from a principal of a lobbyist, in violation of § 36-25-5.1(a), Ala. Code 1975. Counts 16-19 were based on Hubbard's receiving the Craftmaster investments. Count 23 was based on Hubbard's soliciting Brooke's help with finding new clients and Hubbard's receiving Brooke's advice regarding the financial-turnaround plan for Craftmaster.[2]

[2]Hubbard does not argue that the Craftmaster investments and Brooke's financial advice were not solicited or received by Hubbard in his personal capacity. Thus, for purposes of this discussion, we treat Craftmaster and Hubbard as synonymous.

1. Facts relating to counts 16-19 and 23

In 2008, Craftmaster obtained a loan of approximately $600,000 from Regions Bank, of which Hubbard personally guaranteed 33 percent. In August 2012, Regions Bank determined that Craftmaster was not generating enough income to repay the loan. In addition, Craftmaster had defaulted on the loan by failing to pay $350,000 in payroll taxes. Regions Bank transferred the loan to its problem-assets department.

Hubbard reached out to Brooke for advice. Based on financial information provided by Hubbard, Brooke concluded that Craftmaster was undercapitalized, and he developed a financial-turnaround plan. Under Brooke's plan, Hubbard would locate several investors to each invest $150,000 in Craftmaster. Craftmaster would then use the money to pay off part of the Regions Bank loan and to pay all the payroll taxes. Each investor would receive Craftmaster stock with a promise of a quarterly dividend at an annualized rate of six percent of the invested amount.

Hubbard procured eight investors, including Brooke. At the time, Brooke was a member of the BCA's executive committee. The BCA retained lobbyists to represent its

interests before the legislature. The lobbyists reported to the BCA's executive director (a lobbyist), who in turn reported to the executive committee. Among the other Craftmaster investors were Sterne Agee Group, Inc. ("Sterne Agee"); Jimmy Rane, president of Great Southern Wood; and Rob Burton, president of Hoar Construction, LLC.

Brooke testified that he received the promised six percent return, which he said was a "very, very good return." A Sterne Agee employee testified that the investment was a "good business deal." Rane testified that the stock "was a good investment" and that Craftmaster never missed a dividend payment. Burton testified that he received a four percent return, although he was supposed to receive six percent.

Based on Hubbard's receiving the subject four investments in Craftmaster, he was convicted of receiving a thing of value from Brooke (count 16), from Sterne Agee (count 17), from Rane (count 18), and from Burton (count 19). (The State did not charge Hubbard with any offense for receiving the investments from the remaining four investors.) Based on Hubbard's requests to Brooke for help in obtaining clients for his consulting work and based on Hubbard's receiving Brooke's

turnaround plan for Craftmaster, Hubbard was convicted on an additional count of soliciting or receiving a thing of value from Brooke (count 23).

2. Discussion regarding counts 16-19 and 23

The section of the Ethics Code under which Hubbard was convicted provides: "[N]o public employee or public official or family member of the public employee or family member of the public official shall solicit or receive a thing of value from a lobbyist, subordinate of a lobbyist, or principal." § 36-25-5.1(a), Ala. Code 1975 (emphasis added). Thus, on counts 16-19 and 23, the State was required to prove (1) that Hubbard was a public employee or public official (2) who solicited or received a "thing of value" (3) from a lobbyist, a lobbyist's subordinate, or a "principal," and (4) that he did so intentionally (see § 36-25-27(a)(1), Ala. Code 1975).

Hubbard challenges these convictions on two bases. First, he argues that his receiving the Craftmaster investments from Brooke, Sterne Agee, Rane, and Burton did not violate the Ethics Code because, he argues, the investments came within a statutory exclusion for when an official "pays full value" for the thing received. Second, Hubbard contends

that Brooke, Rane, and Burton were not "principals" because they did not hire lobbyists to represent them personally. Hubbard does not dispute that Sterne Agee was a principal.

a. The full-value exclusion

For purposes of the prohibition of receiving a thing of value from a principal, the Ethics Code broadly defines "thing of value" as "[a]ny gift, benefit, favor, service, gratuity, tickets to or passes to an entertainment, social or sporting event, unsecured loan, other than those loans and forbearances made in the ordinary course of business, reward, promise of future employment, or honoraria or other item of monetary value." § 36-25-1(34)a, Ala. Code 1975. The Ethics Code then sets forth a negative definition of "thing of value": "The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof ...." § 36-25-1(34)b. The negative definition includes 18 subparts, which we will refer to in this opinion as "exclusions."[3] In particular, the

[3]Our use of this term is for convenience only and does not suggest or imply that anyone other than the State bears the burden of persuasion ("proof") as to each subpart of § 36-25-1(34)b that is at issue in a case.

Ethics Code defines as not being a thing of value "[a]nything for which the recipient pays full value." § 36-25-1(34)b.9.

As to counts 16-19, Hubbard relies on this full-value exclusion, arguing that, by providing stock to the Craftmaster investors, he paid full value for their investments.[4] The State, on the other hand, contends that Hubbard did not "pay" the investors because the meaning of the word "pays," as used in the statute, is limited to the payment of money. Alternatively, the State argues that the stock did not constitute "full value" for the investments.

The Court of Criminal Appeals characterized Hubbard's argument as attacking the weight of the evidence. See Hubbard v. State, ___ So. 3d at ___, ___. That characterization missed the mark. Hubbard's argument challenged not the weight of the evidence, but the circuit court's interpretation of the full-value exclusion and the sufficiency of the State's evidence to prove that the exclusion did not apply. Alternatively, the Court of Criminal Appeals held that the

---

[4]Hubbard also argues in his brief that the circuit court erred by failing to instruct the jury on the full-value exclusion. However, Hubbard did not raise that issue in his certiorari petition, so it is outside the scope of our review. See Ex parte Franklin, 502 So. 2d 828, 828 n.1 (Ala. 1987).

term "pays" is limited to the payment of money. ___ So. 3d at ___, ___.

We first address the meaning of "pays" and then whether the Craftmaster stock constituted "full value" for the investments.

i. Meaning of "pays"

We review issues of statutory interpretation de novo. Ex parte Kennemer, 280 So. 3d 367, 370 (Ala. 2018). "'Absent any indication to the contrary, the words [of a statute] must be given their ordinary and normal meaning.'" Ex parte Ankrom, 152 So. 3d 397, 409 (Ala. 2013) (quoting Walker v. State, 428 So. 2d 139, 141 (Ala. Crim. App. 1982)).

In determining whether the plain meaning of the word "pays" includes transfers of nonmonetary items such as stock, several legal reference works are informative. Black's Law Dictionary defines "payment" as: "1. Performance of an obligation by the delivery of money or some other valuable thing accepted in partial or full discharge of the obligation. 2. The money or other valuable thing so delivered in satisfaction of an obligation." Black's Law Dictionary 1243

(9th ed. 2009) (emphasis added).[5] The term is similarly defined in Corpus Juris Secundum:

> "Payment is the discharge in money of a sum due or the performance or satisfaction of a pecuniary obligation in whole or in part, by compliance with the terms of the obligation, or by the actual or constructive delivery of money or its equivalent, by the obligor or someone for him or her to the obligee for the purpose of extinguishing the obligation in whole or in part and the acceptance as such by the obligee. Payment has also been defined as the full or partial discharge of a pecuniary obligation by money or what is accepted as the equivalent of a specific sum of money; delivery and acceptance of money or its equivalent in discharge of an obligation; and the discharge in money or its equivalent of an obligation or debt owing by one person to another. ...
>
> "....
>
> "Payment requires a tender, or the actual or constructive delivery by a debtor or someone for the debtor to the debtor's creditor, or some other person authorized to receive it, of money or something accepted by the creditor as the equivalent of money, with the intention or purpose on the part of the payor or transferor to extinguish a debt or obligation in whole or in part and its acceptance by the creditor for the same purpose.
>
> "....
>
> "Generally, nothing is to be considered as payment in fact except money unless the creditor expressly agrees to receive something else in its

[5]We refer to the ninth edition of Black's Law Dictionary because that was the most recent edition available when the legislature enacted the full-value exclusion in 2010.

> place, but what the parties to the contract agree be accepted as payment is, in fact, payment."

70 C.J.S. Payment § 1 (2018) (footnotes omitted; emphasis added). Further, American Jurisprudence specifically addresses "payment" in stock: "With the parties' agreement, corporate stock may be given in payment of an obligation ...." 60 Am. Jur. 2d Payment § 29 (2014). These standard references suggest that the meaning of "pays" is not limited to payment in money. See also, e.g., B.M. v. Jefferson Cty. Dep't of Human Res., 183 So. 3d 157, 163 (Ala. Civ. App. 2015) (noting that witness testified that party was "paid in food and gas").

The State contends, however, that "pays" is commonly understood as the payment of money only. The State relies on a definition from the 10th edition of Black's Law Dictionary of the word "pay":

> "1. To give money for a good or service that one buys; to make satisfaction <pay by credit card>. 2. To transfer money that one owes to a person, company, etc. <pay the utility bill>. 3. To give (someone) money for the job that he or she does; to compensate a person for his or her occupation ... <she gets paid twice a month>. 4. To give (money) to someone because one has been ordered by a court to do so <pay the damages>."

Black's Law Dictionary 1309 (10th ed. 2014) (emphasis added). Further, the State asserts, no one ordinarily speaks of

"paying" nonmonetary items in exchange for money, as Hubbard argues he did here. The State points out that the legislature chose to use the word "pays," not the broader term "exchanges."

The State's interpretation of "pays" is unreasonably narrow and inconsistent with the common and ordinary meaning of the word. The legal references discussed above, including Black's Law Dictionary, recognize that the concept of payment is broader than money. Moreover, the definition on which the State relies did not appear in Black's until the 10th edition was issued in 2014. Thus, that definition was not available for the legislature's reference when it enacted the full-value exclusion in 2010. Indeed, at that time the most recent Black's definition of "pay" had specifically included nonmonetary items. See Black's Law Dictionary 1128 (6th ed. 1990) ("To discharge a debt by tender of payment due; to deliver to a creditor the value of a debt, either in money or in goods, for his acceptance." (emphasis added)).

As for the State's argument that one cannot "pay" nonmonetary items for money, it is worth noting that the full-value exclusion applies to "[a]nything for which the recipient

pays full value." § 36-25-1(34)b.9 (emphasis added). "Anything" ordinarily means anything. See United States v. Gonzales, 520 U.S. 1, 5 (1997) ("Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" (quoting Webster's Third New International Dictionary 97 (1976))). So, if the "anything" that a public official receives includes money, there is no reason why, given the breadth of the concept of payment, the official could not "pay" for that money with a nonmonetary item such as stock.

In addition, the State contends that reading "pays" as including nonmonetary items would render other thing-of-value exclusions inoperative or superfluous. Specifically, the State asserts that this interpretation would destroy restrictions contained in the bank-loan exclusion (§ 36-25-1(34)b.5) and the compensation exclusion (§ 36-25-1(34)b.10).

The bank-loan exclusion carves out from the definition of "thing of value" "[l]oans from banks and other financial institutions on terms generally available to the public." § 36-25-1(34)b.5. The State posits that if, under the full-value exclusion, an official could obtain a private loan from

any principal simply by "pay[ing] full value" for it (presumably in the form of a promise to repay with interest), then the official could circumvent the requirements of the bank-loan exclusion that loans be from an institutional lender and on publicly available terms.

Similarly, the compensation exclusion allows an official to receive certain business compensation that is "unrelated" to public service. § 36-25-1(34)b.10. The State contends that if, under the full-value exclusion, an official could receive money from a principal for any reason merely by "pay[ing] full value" for it with nonmonetary items, then the official could render nugatory the requirement of the compensation exclusion that the compensation be "unrelated" to the official's service.

The State overlooks an important principle of statutory interpretation that intervenes when provisions seem facially inconsistent: the general/specific canon. As explained by Justice Antonin Scalia, writing for the United States Supreme Court:

> "'[I]t is a commonplace of statutory construction that the specific governs the general.' Morales v. Trans World Airlines, Inc., 504 U.S. 374, 384 (1992). That is particularly true where ... '[the

legislature] has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions.' Varity Corp. v. Howe, 516 U.S. 489, 519 (1996) (THOMAS, J., dissenting); see also HCSC-Laundry v. United States, 450 U.S. 1, 6 (1981) (per curiam) (the specific governs the general 'particularly when the two are interrelated and closely positioned, both in fact being parts of [the same statutory scheme]').

"The general/specific canon is perhaps most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission. To eliminate the contradiction, the specific provision is construed as an exception to the general one. See, e.g., Morton v. Mancari, 417 U.S. 535, 550-551 (1974). But the canon has full application as well to statutes such as the one here, in which a general authorization and a more limited, specific authorization exist side by side. There the canon avoids not contradiction but the superfluity of a specific provision that is swallowed by the general one, 'violat[ing] the cardinal rule that, if possible, effect shall be given to every clause and part of a statute.' D. Ginsberg & Sons, Inc. v. Popkin, 285 U.S. 204, 208 (1932). The terms of the specific authorization must be complied with. For example, in [Ginsberg,] a provision of the Bankruptcy Act prescribed in great detail the procedures governing the arrest and detention of bankrupts about to leave the district in order to avoid examination. The Court held that those prescriptions could not be avoided by relying upon a general provision of the Act authorizing bankruptcy courts to '"make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of [the] Act."' Id., at 206 (quoting Bankruptcy Act of 1898, § 2(15), 30 Stat. 546). The Court said that '[g]eneral language of a statutory provision,

> although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment.' 285 U.S., at 208. ... Or as we said in a much earlier case:
>
> > "'It is an old and familiar rule that, where there is, in the same statute, a particular enactment, and also a general one, which, in its most comprehensive sense, would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment. This rule applies wherever an act contains general provisions and also special ones upon a subject, which, standing alone, the general provisions would include.' United States v. Chase, 135 U.S. 255, 260 (1890) (citations and internal quotation marks omitted).
> >
> > "....
>
> "... [Further], we know of no authority for the proposition that the canon is confined to situations in which the entirety of the specific provision is a 'subset' of the general one. When the conduct at issue falls within the scope of both provisions, the specific presumptively governs, whether or not the specific provision also applies to some conduct that falls outside the general."

RadLAX Gateway Hotel, LLC v. Amalgamated Bank, 566 U.S. 639, 645-46, 648 (2012).

This application of the general/specific canon makes clear that interpreting the word "pays" as including

nonmonetary items does not render any of the other exclusions superfluous. Simply put, if particular conduct is addressed by more than one exclusion, the most specific exclusion is the legally relevant one. In this way, each exclusion has a field of operation, and none destroys any other.

Accordingly, in light of the plain meaning of the word "pays," we hold that, within the full-value exclusion of § 36-25-1(34)b.9, "pays" is not limited to the payment of money but also includes nonmonetary items such as stock that a public official or employee transfers in a transaction. Therefore, Hubbard's transfer of the Craftmaster stock in exchange for the investments by Brooke, Sterne Agee, Rane, and Burton comes within the meaning of "pays."

ii. "Full value" for investments

We must next address whether the Craftmaster stock constituted "full value" for the investors' money. Specifically, we must determine whether the State presented evidence that the stock did not constitute full value. In reviewing the sufficiency of the evidence, we determine whether, at the time the motion for a judgment of acquittal was made, the evidence supported a reasonable inference of

guilt, viewing the evidence in the light most favorable to the State. Ex parte Burton, 783 So. 2d 887, 890-91 (Ala. 2000).

As previously noted, the Craftmaster stock came with a promise of dividends equaling a six percent annual return, which multiple investors testified was a good return. There was also evidence that that promise was not a sham or illusory. Brooke testified that he received the promised six percent return. Rane testified that Craftmaster never missed a dividend payment. Although Burton testified that he received a four percent return rather than six percent, we do not consider that two percent deviation material to whether the promise was a sham, and the State does not argue that it is material.

Nevertheless, the State contends that it presented evidence that the stock did not constitute "full value" for the $150,000 investments. The only evidence to which the State points are (1) Hubbard's e-mail to a prospective investor, stating, "I suspect [that two investors other than those at issue here] are both doing it more to help me than for the return on their investment," and (2) Craftmaster's poor financial state at the time of the investments. Contrary

to the State's argument, Hubbard's e-mail concerned investors' motives for investing, which are irrelevant to whether Hubbard objectively paid, and the investors received, full value for their money. Nor did Craftmaster's financial state imply an absence of full value. Although the company's dire condition created a large element of risk in the investments, the potential for a commensurate return was, as confirmed by later events, real.

Accordingly, the State failed to present evidence that the value of each investor's Craftmaster stock was less than $150,000. Therefore, the State failed to prove that Hubbard did not pay full value for the Craftmaster investments, and thus failed to prove the offense of receiving a thing of value from a principal. Accordingly, we reverse the Court of Criminal Appeals' judgment as to Hubbard's convictions on counts 16-19.

b. "Principal"

In count 23, Hubbard was convicted of violating § 36-25-5.1(a) for soliciting and receiving business advice from Brooke, who the State alleged was a principal. At all times relevant to this appeal, Brooke was a member of the BCA's

board and the BCA's executive committee; it is undisputed that the BCA is a principal. Hubbard argues, however, that the State failed to present sufficient evidence from which the jury could have fairly concluded beyond a reasonable doubt that Brooke was a principal, which is defined in § 36-25-1(24), Ala. Code 1975, as "[a] person or business which employs, hires, or otherwise retains a lobbyist." Hubbard's argument is that the BCA, not Brooke, employed, hired, or otherwise retained a lobbyist.[6]

Hubbard presented this same argument to the Court of Criminal Appeals, which analyzed the issue as follows:

> "Hubbard argues that Brooke was not a principal because the statute provides that a principal is a person or business that hires a lobbyist, and Brooke did not do so. James Sumner, the former director of the Alabama Ethics Commission and an expert witness at trial, testified:
>
> > "'What we have always said is that, clearly the person who signs on behalf of that business is a principal. But there are

---

[6]Hubbard does not argue that the business advice he solicited and received from Brooke was not a "thing of value"; that element of § 36-25-5.1(a) as it pertains to count 23 is not at issue on appeal.

Also, as to counts 18 and 19, Hubbard contends that Rane and Burton were not principals. However, because we are reversing as to those counts based on the full-value exclusion, we need not address this additional contention.

> others, decision makers, who are officers. And of those two, can be and shall be, considered as principals as well. That could be the officers. It could be like an executive committee of the company and -- and so forth, and -- but it is -- for a company, it is broader than just one individual.'
>
> "....
>
> "Sumner further explained that, in political-interest groups or advocacy organizations, several people would be considered principals: presidents, vice presidents, chairs, vice chairs, and the leadership at the top of the organization. Therefore, based on the evidence presented at trial, the jury could reasonably have found that Brooke was a principal in the BCA."

Hubbard v. State, ___ So. 3d at ___.

In concluding as it did, the Court of Criminal Appeals failed to engage in an analysis of the plain language of the definition of "principal" to ascertain its meaning but, instead, relied exclusively on the expert testimony of James Sumner, former director of the Alabama Ethics Commission. The expert testimony of Sumner concerning the meaning of § 36-25-1(24) is not authoritative, nor even all that persuasive. We must determine the plain meaning of § 36-25-1(24) by applying the relevant principles of statutory interpretation.

Under § 36-25-1(24), a "principal" is the "person or business which employs, hires, or otherwise retains a lobbyist." (Emphasis added.) This definition makes clear that the thing that qualifies a person or business as a principal is the act of "employ[ing], hir[ing], or otherwise retain[ing] a lobbyist." As noted above, it is undisputed that the BCA is a principal in that it employed, hired, or otherwise retained lobbyists. The question before this Court, however, is whether Brooke was a principal.

In the present case, the evidence presented by the State indicates that Brooke was a member of the BCA's board and of its executive committee. The State notes in its brief that "Brooke occupied one of the top leadership positions on the BCA board's executive committee from 2010-2012. ... The BCA's lobbyists reported to the group's top lobbyist, [Billy] Canary. And he 'report[ed] to the executive committee of the BCA Board,' which included Brooke." The State's brief, at p. 47. The State did not present any evidence that Brooke was the individual who employed, hired, or otherwise retained the BCA's lobbyists. Neither did the State present any evidence that Brooke negotiated or signed on behalf of the BCA the

contractual agreements with Billy Canary or the BCA's other lobbyists. We note that the definition of "principal" unequivocally does not include a person or business that supervises or manages a lobbyist, but includes only those that "employ[], hire[], or otherwise retain[] a lobbyist." Accordingly, based on the facts presented by the State, the issue is whether the definition of "principal" is broad enough to encompass a member of the board of an entity that has employed, hired, or otherwise retained a lobbyist, even though there is no evidence that the member of the board was involved with the actual employing, hiring, or otherwise retaining of the entity's lobbyist.

The State appears to take the position that the terms "business" and/or "person," as used in the definition of "principal" in § 36-25-1(24), include not only the entity itself that employs, hires, or otherwise retains the lobbyist, but also all the individual members of the entity's board. See the State's brief, at pp. 48-51. In other words, according to the State, it is insignificant that Brooke had no personal or direct involvement with employing, hiring, or otherwise retaining the BCA's lobbyists because Brooke was a

member of the BCA's board. The State argues that the only evidence it needed to present to support the jury's verdict finding Brooke to be a principal was that the BCA was a principal. We disagree.

The terms "business" and "person" used in § 36-25-1(24) are terms of art defined in that statute as follows:

> "(1) BUSINESS. Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, or any other legal entity.
>
> "....
>
> "(23) PERSON. A business, individual, corporation, partnership, union, association, firm, committee, club, or other organization or group of persons."

§ 36-25-1(1) and (23), Ala. Code 1975 (capitalization in original). The definitions of both terms include the word "corporation." According to the Alabama Secretary of State's records, the BCA is a corporation.[7] The legislature did not define the term "corporation" in the Ethics Code; thus, this Court must give the term its plain and ordinary meaning. "Corporation" is defined as

---

[7]See Rimpsey Agency, Inc. v. Johnston, 218 So. 3d 1242, 1243 n.1 (Ala. Civ. App. 2016)("[T]his court may take judicial notice of matters of public record, including records of the Secretary of State ....").

> "[a]n entity (usu[ally] a business) having authority under law to act as a single person distinct from the shareholders who own it and having rights to issue stock and exist indefinitely; a group or succession of persons established in accordance with legal rules into a legal or juristic person that has a legal personality distinct from the natural persons who make it up, exists indefinitely apart from them, and has the legal powers that its constitution gives it."

Black's Law Dictionary 391 (9th ed. 2009) (emphasis added).

When the word "corporation" is given its plain and ordinary meaning, it is clear that the BCA is "a legal or juristic person that has a legal personality distinct from the natural persons that make it up" and that the BCA "exists ... apart from them."[8] In other words, the BCA and the individual members of the BCA's board are not the same legal person; they exist distinct from one another. Therefore, we conclude that the Court of Criminal Appeals' interpretation of the word "principal" was in error. The term "principal" is not broad

---

[8]This principle is well established in our caselaw. See, e.g., Hill v. Fairfield Nursing & Rehab. Ctr., LLC, 134 So. 3d 396, 407 (Ala. 2013)("'"[A] corporation is a legal entity existing separate and apart from the persons composing it ...."'" (quoting Cohen v. Williams, 294 Ala. 417, 420, 318 So. 2d 279, 280 (1975), quoting in turn 18 Am. Jur. 2d Corporations § 14, p. 559)); Ex parte AmSouth Bank of Alabama, 669 So. 2d 154, 156 (Ala. 1995) ("A corporation is generally regarded as a legal entity separate from its directors, officers, and shareholders.").

enough to encompass within its meaning a member of the board of an entity that has employed, hired, or otherwise retained a lobbyist when there is no evidence that the board member was involved with the employing, hiring, or otherwise retaining of the entity's lobbyist.[9]

We note that our conclusion that a board member of an entity that has employed, hired, or otherwise retained a lobbyist is not a "principal" solely based on the individual's position as a board member does not foreclose the possibility that a board member of such an entity could, in fact, satisfy the definition of "principal." In other words, there is no "bright-line" rule that a member of the board of an entity

---

[9]Our interpretation of "principal" is further supported by the fact that the legislature employed specific language in § 36-25-1(2), Ala. Code 1975, to include a reference to officers, owners, partners, board-of-directors members, and employees within the definition of the term "business with which the person is associated." The entirety of the definition of "business with which the person is associated" states: "Any business of which the person or a member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business." The legislature clearly understands the difference between a corporation and the individuals who compose it. In defining "principal," the legislature chose not to include the specific language it employed in defining "business with which the person is associated." This Court cannot include within the definition of "principal" that which the legislature specifically chose to exclude.

that has employed, hired, or otherwise retained a lobbyist cannot be considered a "principal." Again, the key to whether an individual fits within the definition of "principal" is the activity of the person, not the person's title, position, or job description. The hallmark of a "principal" is one that employs, hires, or retains a lobbyist; this will necessarily be determined on a case-by-case basis.

In light of the foregoing, the jury could not have reasonably concluded that Brooke was a principal based on the mere facts that the BCA was a principal and that Brooke was a member of its board and its executive committee. The State was required to present sufficient evidence that Brooke himself was a "person or business which employs, hires, or otherwise retains a lobbyist." The State failed to present any such evidence. Accordingly, we reverse the Court of Criminal Appeals' judgment as to Hubbard's conviction on count 23.

B. Consulting payments from American Pharmacy Cooperative, Inc., and Edgenuity, Inc. (counts 6 and 10)

Hubbard was convicted on two other counts of soliciting or receiving a thing of value from a principal in violation of § 36-25-5.1(a), Ala. Code 1975. Counts 6 and 10 were based on Hubbard's receiving payments from two companies -- American Pharmacy Cooperative, Inc. ("APCI"), and Edgenuity, Inc. ("Edgenuity").

1. Facts relating to counts 6 and 10

In 2011, Hubbard met Michael Humphrey at an education-products conference in San Francisco. Humphrey was executive vice president of E2020, Inc., a company that provided online digital curriculum to public schools. The company's name was later changed to Edgenuity, Inc.

Hubbard and Humphrey later discussed through a mutual acquaintance, Ferrell Patrick (Edgenuity's Alabama lobbyist), the possibility of Edgenuity's hiring Hubbard as a consultant. Humphrey e-mailed one of Edgenuity's owners, stating:

> "I am considering a deal with the House Speaker in Alabama as you know....he can get us in front of any speaker in the country regardless of party....but way more influence with the R[epublican]s...I think this would help us in states that we do not have a lobby presence."

Michelle Freeman, an Edgenuity paralegal, helped Humphrey draft a contract with Hubbard. In an e-mail sending Freeman his initial draft of the contract, Humphrey wrote: "Mike is the current Speaker of the House in Alabama....my thought in using him would be for intros into House and Senate leadership in states where we do not have lobby support (and even states where we do, when necessary)." Freeman noted that Hubbard "could speak on our behalf: (i) at regional/national political party conferences; or (ii) meetings with his elected colleagues in other states; (iii) roundtables sponsored by think tanks; or (iv) at education industry conferences."

In March 2012, Edgenuity and Hubbard (on behalf of Auburn Network) signed the contract. It provided that Edgenuity would pay Hubbard $7,500 per month and that his services would not take place within Alabama. After Patrick told Hubbard that Edgenuity had approved the contract, Hubbard responded: "Now, how do I learn more about what they do and how I can help outside the state [o]f Alabama?" In response, Patrick offered Hubbard "tutorials over a glass of [S]cotch."

On Edgenuity's behalf, Hubbard contacted the speakers of the Houses of Representatives of North Carolina and South

Carolina and contacted officials of the National Collegiate Athletic Association. Between April 2012 and July 2014, Edgenuity paid Hubbard a total of $210,000.

Patrick also helped Hubbard obtain a consulting contract with another of Patrick's lobbying clients, APCI. APCI's president, Timothy Hamrick, described APCI as "a corporate office for ... community owned, community based, independent pharmacies." APCI's purpose was to help these pharmacies compete with larger chains through legislative efforts and advertising.

In June 2012, Hubbard, as president of Auburn Network, signed a contract with APCI. Like the Edgenuity contract, it prohibited Hubbard from providing services within Alabama. Under the contract, Hubbard would be paid $5,000 per month. Between August 2012 and January 2014, APCI paid Hubbard $95,000.

Hamrick testified at trial that, when APCI hired Hubbard, "[t]he main focus was to represent [APCI's] interest in these other states that we were expanding to." Hamrick also noted that, "[b]eing Speaker of the House in Alabama, [Hubbard] ... knew the Speakers and Legislators from other states." Hamrick

testified that he thought Hubbard could use the contacts he had developed as Speaker of the House in states where APCI did business.

In 2013, APCI lobbied the Alabama Legislature for a budget provision that would make APCI the statewide manager of Medicaid pharmacy benefits and would prevent an out-of-state entity from becoming the manager. The provision was included in the proposed budget for the upcoming fiscal year. Hamrick wrote to Hubbard, thanking him for "championing" the provision. Just before the budget came up for a vote in the House of Representatives, Hubbard's chief of staff, Josh Blades, became aware of Hubbard's contract with APCI and warned Hubbard that he should not vote on the budget, which contained the Medicaid-manager provision. At Hubbard's request, Blades tried to get the provision removed before the budget came up for a vote, but he was not successful. Blades again advised Hubbard not to vote on the budget, but Hubbard, concerned about how it would look for him not to vote on "his own budget," went ahead and voted in favor of it. The budget passed the House of Representatives, but the language

favorable to APCI was removed by a conference committee before the final budget was approved by the full legislature.

In connection with these consulting contracts with APCI and Edgenuity, Hubbard had written to Sumner, then director of the Alabama Ethics Commission, requesting clarification about the legality of entering into such contracts. In response, Sumner wrote:

> "As a general rule, the law prohibits you from using your position or the mantle of your office to provide a personal benefit to yourself or to your company, Auburn Network, Inc. This means that should any issue affecting Auburn Network, Inc.[,] differently from all other similarly situated businesses come before the Legislature, you need to remove yourself from any discussions, votes, etc. dealing with Auburn Network, Inc."

Sumner testified at trial that, during various conversations with Hubbard, Sumner or other Commission staff told Hubbard that he could not use his official position to benefit himself or his business.

Based on Hubbard's receiving the payments under these consulting contracts, he was convicted of receiving a thing of value from APCI (count 6) and Edgenuity (count 10).

2. Discussion regarding counts 6 and 10

Hubbard argues that the payments he received under his contracts with APCI and Edgenuity came within the Ethics Code's "compensation" exclusion from the definition of "thing of value."[10] This exclusion provides:

> "The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof:
>
> "....
>
> "... Compensation and other benefits earned from a non-government employer, vendor, client, prospective employer, or other business relationship in the ordinary course of employment or non-governmental business activities under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's public service as a public official or public employee."

§ 36-25-1(34)b.10, Ala. Code 1975.[11]

---

[10]Hubbard does not argue that the payments from APCI and Edgenuity to Auburn Network were not ultimately received by Hubbard personally. Thus, for purposes of this discussion, we treat Auburn Network and Hubbard as synonymous.

[11]Hubbard also contends in his brief that the payments came within the full-value exclusion. However, Hubbard did not raise that issue in his certiorari petition; thus, it is outside the scope of our review. See Ex parte Franklin, 502 So. 2d 828, 828 n.1 (Ala. 1987).

There are three elements to this compensation exclusion: the compensation or other benefits must be (1) earned from a nongovernmental business relationship (such as an employer, client, or vendor), (2) in the ordinary course of employment or nongovernmental business activity, (3) under circumstances that make clear that the compensation or benefits are provided for reasons unrelated to the recipient's public service. Hubbard contends that the third element must be understood as meaning only that the compensation must not be a quid pro quo for the public official's exercise of official power. When this element is so understood, Hubbard argues, the State failed to disprove its applicability because the State presented no evidence that the consulting payments were such a quid pro quo.

Initially, the State responds that Hubbard waived the compensation-exclusion argument because he did not request a jury instruction on this exclusion. However, Hubbard's argument is not a failure-to-instruct argument, but a sufficiency-of-the-evidence argument: he contends that the State failed to present evidence to disprove the applicability of the exclusion. To preserve such a sufficiency argument, a

party is not required to request a jury instruction. Cf. Complete Cash Holdings, LLC v. Powell, 239 So. 3d 550, 557 n.7 (Ala. 2017) (holding in a civil case that an objection to a jury instruction was not necessary to preserve a sufficiency-of-the-evidence issue). Instead, a sufficiency argument is preserved by a motion for a judgment of acquittal. Ex parte McNish, 878 So. 2d 1199 (Ala. 2003). When Hubbard raised the compensation exclusion in his motion for a judgment of acquittal, he preserved it.

On appeal, the Court of Criminal Appeals incorrectly understood Hubbard's argument as challenging the weight of the evidence. See Hubbard v. State, ___ So. 3d at ___, ___. Instead, Hubbard's argument raised issues of statutory interpretation and the sufficiency of the evidence. The Court of Criminal Appeals alternatively held that the evidence was sufficient to prove that the compensation exclusion did not apply. Id. at ___, ___.

We first address the meaning of the compensation exclusion's third element, which requires that the compensation be "under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's

public service as a public official or public employee." We then apply our interpretation of this element to the facts of this case.

a. Meaning of compensation exclusion's "unrelated" element

We review issues of statutory interpretation de novo. Ex parte Kennemer, 280 So. 3d at 370. "'Absent any indication to the contrary, the words [of a statute] must be given their ordinary and normal meaning.'" Ex parte Ankrom, 152 So. 3d at 409 (quoting Walker v. State, 428 So. 2d at 141).

As previously noted, the compensation exclusion carves out from the definition of "thing of value" certain types of compensation that are earned "under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's public service as a public official or public employee." § 36-25-1(34)b.10. Hubbard argues that this restrictive language should be interpreted as precluding only compensation to an official as quid pro quo for exercising his or her official governmental power. Without question, the language clearly shuts out from the scope of the exclusion all quid pro quo exchanges. Yet, on its face, the language is much broader than that. To come within the language of the

exclusion, the compensation must be "for reasons unrelated to" the official's public "service," and that unrelatedness must be "clear" from the "circumstances." Plainly, the kinds of compensation shut out by this element of the exclusion are not limited to quid pro quo exchanges.

In support of his quid pro quo reading, Hubbard relies on Ethics Commission Advisory Opinion No. 2018-08. There, the Ethics Commission advised that an off-duty police officer could obtain a job performing private security work, as long as the officer did not provide or promise the employer any favorable police treatment to obtain the job. Hubbard contends that, like the officer, his skills and expertise made him desirable to hire, and the fact that those skills and expertise were also used in his public service did not disqualify his consulting contracts from the compensation exclusion.

But that is not the question the Ethics Commission was addressing in Advisory Opinion No. 2018-08. Rather, the Commission was addressing whether the officer's off-duty work, which he could also have performed while on duty, violated the Ethics Code's separate prohibition of using public property

for private benefit. See § 36-25-5(c) ("No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, [or] any other person ...."). Because the person who requested the ethics opinion apparently did not specify that the employer was a lobbyist or principal, the Commission had no occasion to address the Ethics Code's prohibition of receiving a thing of value from a lobbyist or principal (§ 36-25-5.1(a)) or the compensation exclusion from the definition of a "thing of value" (§ 36-25-1(34)b.10). Therefore, Advisory Opinion No. 2018-08 has no bearing on our interpretation of the compensation exclusion.

Similarly, Hubbard misplaces reliance on another Ethics Commission opinion, Advisory Opinion No. 2018-09. There, the Commission applied a 10-factor "test" to advise a public employee whether his proposed post-retirement employment by a principal would come within the compensation exclusion. After that multi-factor discussion, the Commission noted that the employee had not "leverage[d]" his public position to obtain

the employment or engaged in quid pro quo corruption. However, those latter conclusory comments were apparently based on the per se prohibition of quid pro quo corruption in § 36-25-7, not on the compensation exclusion. See id. at 6 & n.2. It does not appear that the Commission conflated the third element of the compensation exclusion with the concept of "leveraging" or quid pro quo, as Hubbard would have us do.

Hubbard similarly contends that this element of the compensation exclusion allows compensation that is based on an official's "status" but not compensation in exchange for his or her "service." However, that is not the distinction drawn by the plain language of § 36-25-1(34)b.10. The statute instead distinguishes between compensation that is clearly unrelated to public service and compensation that is not.

In light of the plain language of the third element of the compensation exclusion and Hubbard's failure to convince this Court that it means anything other than what it says, we reject his reading of it as shutting out only quid pro quo exchanges. Instead, we hold that, to meet this element of the compensation exclusion, the compensation must be provided solely for reasons unrelated to the official's or employee's

public service, and that unrelatedness must be clear from the circumstances of the compensation.[12]

We recognize that this interpretation of the statutory language could result in shutting out from the compensation exclusion some forms of private employment or advertising that might otherwise be assumed innocuous. To the extent that that result may be in tension with perceived public policy, any remedy lies with the legislature, not the courts. We are not at liberty to ignore or adjust the plain meaning of the statute. Morgan Cty. Comm'n v. Powell, 292 Ala. 300, 310, 293 So. 2d 830, 839 (1974).

b. Application to this case

In light of our interpretation of the compensation exclusion, we must determine whether the State presented evidence that Hubbard's consulting payments were not earned "under circumstances which make it clear that the [payments were] provided for reasons unrelated to [Hubbard's] public

[12]Hubbard also argues that, if we do not accept his interpretation of the compensation exclusion, then the exclusion is unconstitutionally vague. But a statute can be unconstitutionally vague only if its meaning is not plain, see Ex parte Hicks, 153 So. 3d 53, 65-66 (Ala. 2014), and we have determined that the meaning of the exclusion is plain as applied to counts 6 and 10. Thus, we need not further address Hubbard's vagueness argument.

service" -- in other words, whether the State presented evidence that the payments were provided for reasons related to his public service. In reviewing the sufficiency of the evidence, we determine whether, at the time the motion for a judgment of acquittal was made, the evidence supported a reasonable inference of guilt, viewing the evidence in the light most favorable to the State. Ex parte Burton, 783 So. 2d at 890-91.

The State presented evidence that Edgenuity's and APCI's payments to Hubbard were provided for reasons related to his public service. Edgenuity executive Humphrey stated in an e-mail that Hubbard "can get [Edgenuity] in front of any speaker in the country regardless of party....but way more influence with the R[epublican]s." Humphrey also wrote: "Mike is the current Speaker of the House in Alabama....my thought in using him would be for intros into House and Senate leadership in states where we do not have lobby support ...." Paralegal Freeman responded that Hubbard "could speak on [Edgenuity's] behalf ... at regional/national political party conferences ... or ... meetings with his elected colleagues in other states."

Likewise, APCI president Hamrick testified that APCI hired Hubbard because, "[b]eing Speaker of the House in Alabama, he ... knew the Speakers and Legislators from other states." In addition, when given an opportunity to support legislation granting APCI a monopoly in Alabama, Hubbard, in Hamrick's words, "champion[ed]" -- and voted for -- that legislation.[13]

Hubbard contends that the payments for his consulting work could not have been related to his public service because APCI and Edgenuity hired him to work outside Alabama. However, the language of the compensation exclusion does not support a per se distinction between work inside and outside

---

[13]Hubbard argues that his legislative work in support of APCI cannot be considered evidence to support his conviction on count 6 because, he asserts, the State agreed at trial that it was not charging him with engaging in a quid pro quo. But Hubbard cites merely comments by the State in an objection and a question during tangentially related testimony of witnesses. The State did not enter into a stipulation that the APCI-legislation matter could not be considered as evidence in support of count 6. Nor did Hubbard request a limiting instruction or jury instruction to that effect. Cf. Rule 105, Ala. R. Evid. ("When evidence which is admissible ... for one purpose but not admissible ... for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly."). Thus, the jury was free to consider Hubbard's support of the legislation in determining whether Hubbard was guilty on count 6.

Alabama. Cf. Ethics Commission Advisory Opinion No. 2016-27, at 6 (advising that a compensation-exclusion analysis must be undertaken even if work is to be performed outside Alabama); Ethics Commission Advisory Opinion No. 97-25 (advising that certain other Ethics Code provisions applied to consulting work both inside and outside Alabama). And even if such a distinction existed, it would not affect count 6 because Hubbard supported APCI's legislation within Alabama.

Therefore, the State presented evidence sufficient to prove that the compensation exclusion did not apply to APCI's and Edgenuity's payments to Hubbard. Accordingly, we affirm the Court of Criminal Appeals' judgment as to Hubbard's convictions on counts 6 and 10.

C. Consulting payments from Capitol Cups, Inc. (count 11)

Hubbard was convicted on one count of using his official position for personal gain in violation of § 36-25-5(a), Ala. Code 1975. This count was based on Hubbard's conduct while promoting products of another company from which he received payments for consulting work, Capitol Cups, Inc. ("Capitol Cups").

1. Facts relating to count 11

Robert Abrams, an inventor from the State of New York, was the majority owner of several businesses operating in Lee County, Alabama. One of the businesses, Capitol Cups, manufactured insulated plastic cups. Abrams and Hubbard occasionally met for breakfast when Abrams was in Alabama. Hubbard told Abrams that he had ideas about companies that might be interested in Capitol Cups' products. As a result, Hubbard and Abrams signed a consulting contract under which Capitol Cups would pay Auburn Network $10,000 per month. The contract was for one year and would be automatically renewed annually unless terminated by one of the parties. Hubbard received $220,000 from Capitol Cups between October 2012 and July 2014.

In performing his role under the contract, Hubbard e-mailed two of his contacts at Publix Super Markets, Inc. ("Publix"), asking if they could arrange a meeting with Capitol Cups. Hubbard identified Capitol Cups as "a company here in Auburn (my district)" "that employs several hundred people." At the bottom of the e-mail, Hubbard identified himself as "Rep. Mike Hubbard[,] Speaker of the House[,]

Alabama House of Representatives." Hubbard did not disclose that he was a paid consultant of Capitol Cups. One of the e-mail recipients forwarded it to another Publix employee, identifying Hubbard only as "the Speaker of the House of the Alabama State House of Representatives" who "sent the email below on behalf of a constituent of his."

2. Discussion regarding count 11

The Ethics Code subsection under which Hubbard was convicted provides:

> "No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law."

§ 36-25-5(a), Ala. Code 1975 (emphasis added). Thus, on count 11, the State was required to prove (1) that Hubbard was a public official or public employee (2) who used or caused to be used his official position or office (3) to obtain personal gain (4) for himself, a family member, or a business with

which he was associated, and (5) that he did so intentionally (see § 36-25-27(a)(1)).[14]

Hubbard challenges the second and third elements, arguing that the evidence at trial was insufficient to prove that he used his official position to obtain personal gain. Specifically, he posits that the State presented no evidence that he used his position as Speaker of the House to obtain the consulting contract with Capitol Cups or to increase his compensation under that contract. The Court of Criminal Appeals concluded that the State presented evidence sufficient to support this count. Hubbard v. State, ___ So. 3d at ___-___.

We first interpret the statutory language "use or cause to be used his or her official position or office to obtain personal gain" in the context of Hubbard's argument here. We then apply our interpretation to the evidence presented.

---

[14]In this case, there is no dispute that Hubbard's conduct and compensation were not "otherwise specifically authorized by law." Thus, we need not address whether that proviso in the statute constitutes an element of the offense or a matter of defense.

a. Meaning of use of official position to obtain personal gain

We review issues of statutory interpretation de novo. Ex parte Kennemer, 280 So. 3d at 370. "'Absent any indication to the contrary, the words [of a statute] must be given their ordinary and normal meaning.'" Ex parte Ankrom, 152 So. 3d at 409 (quoting Walker v. State, 428 So. 2d at 141). Given Hubbard's argument, we must decide whether the statutory language "use ... his ... official position ... to obtain personal gain" is plainly limited to conduct used to obtain a contract or to increase compensation, or whether it also plainly includes conduct in performance of a fixed-compensation contract.[15]

Two considerations persuade us that the latter is the correct interpretation. First, although a contract may set a party's compensation at a fixed periodic amount, if that party

[15]For purposes of our discussion, a "fixed-compensation contract" is a contract under which the amount of compensation is not expressly correlated to performance (e.g., not commission-based compensation). See, e.g., Wellborn v. Buck, 114 Ala. 277, 281, 21 So. 786, 788 (1897) ("In this case there was ... an actual, subsisting engagement for the rendition of services at a fixed compensation ...."); Hughes v. Jefferson Cty. Bd. of Educ., 370 So. 2d 1034, 1036 (Ala. Civ. App. 1979) ("The Board has the authority to enter into contracts of employment with teachers for fixed compensation.").

materially fails to perform his or her contractual duties at any time during the life of the contract, then ordinarily the other party may terminate the contract, see Edwards v. Allied Home Mortg. Capital Corp., 962 So. 2d 194, 207 (Ala. 2007). Thus, an official's performance under such a contract may be "use[d] ... to obtain [further] personal gain" in the form of continued performance (payment of compensation) by the other party.

Second, if a contract leaves open the possibility that it will be renewed (as here), then a party's performance may persuade the other party to renew the contract. Therefore, an official's performance under such a contract may be for the purpose of "obtain[ing further] personal gain" in the form of a renewal of the contract.

For these reasons, we hold that the language "use or cause to be used his or her official position or office to obtain personal gain" plainly includes an official's conduct in performance of a fixed-compensation contract.[16]

---

[16]Because we conclude that the meaning of the statute is plain, we need not address Hubbard's alternative argument that the statute is unconstitutionally vague. See Ex parte Hicks, 153 So. 3d 53, 65-66 (Ala. 2014).

Hubbard posits various hypothetical scenarios in which he argues that, under our plain-language reading, § 36-25-5(a) would criminalize otherwise innocent conduct. To the extent that the plain meaning of the statute may be at odds with Hubbard's view of public policy, that is a matter for the legislature; this Court is without power to change the statute. See Ex parte Hicks, 153 So. 3d 53, 63 (Ala. 2014). We note, too, that criminalization of otherwise noncriminal conduct is the ordinary function of much criminal statutory law. Cf. State v. Southern Express Co., 200 Ala. 31, 37, 349 So. 343, 349 (1917) ("[T]he state [has power] to create and define as a crime the mere doing of an act which but for the statute would be innocent of offense."). This kind of criminalization would at least not be unexpected from an Ethics Code that was designed to thwart corruption with prophylactic measures.

b. Application to this case

We must next determine whether the State presented evidence that Hubbard "use[d] ... his ... official position ... to obtain personal gain" by using that position in performing his consulting contract with Capitol Cups. In

reviewing the sufficiency of the evidence, we determine whether, at the time the motion for a judgment of acquittal was made, the evidence supported a reasonable inference of guilt, viewing the evidence in the light most favorable to the State. Ex parte Burton, 783 So. 2d at 890-91.

As noted above, when Hubbard e-mailed his Publix contacts, he identified himself as a state legislator and as Speaker of the House of Representatives. He identified Capitol Cups simply as a company in his district, without disclosing his paid-consultant relationship with the company. And the success of that impression -- that he was contacting Publix merely as a legislator on behalf of a constituent -- was confirmed by Publix personnel's subsequent internal e-mail describing Hubbard's request. In view of this evidence, we conclude that the State presented evidence that Hubbard "use[d]" his "official position" of legislator and Speaker in performance of the Capitol Cups contract.[17]

---

[17]Hubbard also engaged in efforts to promote sales of Capitol Cups' products to the Chick-fil-A and Waffle House restaurant companies. Because we conclude that the evidence relating to Hubbard's communication with Publix was sufficient to support this offense, we need not address Hubbard's efforts relating to Chick-fil-A and Waffle House.

Therefore, the evidence was sufficient to support the jury's conclusion that Hubbard "use[d] ... his ... official position or office to obtain personal gain." Accordingly, we affirm the Court of Criminal Appeals' judgment as to Hubbard's conviction on count 11.

D. Work regarding CSP Technologies, Inc., patent (count 14)

Hubbard was convicted on one count of using public property for private benefit in violation of § 36-25-5(c), Ala. Code 1975. This count was based on Hubbard's using his chief of staff's time to assist with finalizing a patent owned by a company controlled by Robert Abrams, while Hubbard was receiving consulting payments from Abrams's company Capitol Cups.

1. Facts relating to count 14

In 2013, a company controlled by Abrams, CSP Technologies, Inc. ("CSP"), had been in patent litigation for over 10 years. CSP received notice that the United States Patent and Trademark Office ("USPTO") had approved a patent that would resolve several issues in the litigation. The patent would not be official, however, until it was issued by the Government Printing Office ("the Printing Office").

Abrams contacted the Printing Office and was told that, because of staff shortages, the Printing Office did not know where the patent was. By then, CSP had spent more than $12 million in legal fees on the litigation.

Abrams asked Hubbard if he knew anyone who could help speed up the issuance of the patent. Hubbard discovered that a Congressman from Mississippi sat on the Congressional committee with oversight of the USPTO. Accordingly, Hubbard turned to his chief of staff, Josh Blades, who had connections in Mississippi. Blades contacted the Congressman's staff, who put Blades in contact with a USPTO employee, Talis Dzenitis. Despite their best efforts, however, neither Blades nor Dzenitis could speed up the issuance of the patent.

During this process, Hubbard occasionally telephoned Blades to check on the status of the patent. On one such occasion, Hubbard said he "had 100,000 reasons to get this done." That comment was made shortly after Hubbard had received his 10th $10,000 check from Capitol Cups. Blades testified that, although he did not know about the Capitol Cups contract, Hubbard's comment made Blades uncomfortable because he immediately thought Hubbard meant money in some

form. Later, Blades told Hubbard that he had done all he could to push the project along and that Hubbard might need to handle it from that point. Hubbard personally contacted Dzenitis, and, shortly thereafter, the patent was issued.

2. Discussion regarding count 14

The Ethics Code subsection under which Hubbard was convicted provides:

> "No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2[, Ala. Code 1975], which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. ..."

§ 36-25-5(c), Ala. Code 1975 (emphasis added). Thus, on count 14, the State was required to prove (1) that Hubbard was a public official or public employee (2) who used or caused to be used (3) public time or human labor under his discretion or control, (4) for his private benefit that would materially

affect his financial interest, and (5) that he did so intentionally (see § 36-25-27(a)(1)).[18]

Hubbard challenges the State's case as to the fourth element, arguing that the State failed to present evidence that Blades's patent-related work "would materially affect [Hubbard's] financial interest." Specifically, Hubbard contends that there was no evidence that Blades's work enabled Hubbard to obtain the contract with Capitol Cups initially or that it had an effect on the longevity of that consulting relationship. The Court of Criminal Appeals held that the evidence was sufficient to support this count. Hubbard v. State, ___ So. 3d at ___-___.

In reviewing the sufficiency of the evidence, we determine whether, at the time the motion for a judgment of acquittal was made, the evidence supported a reasonable inference of guilt, viewing the evidence in the light most favorable to the State. Ex parte Burton, 783 So. 2d at 890-91. As previously discussed, it is a fundamental principle of

---

[18]Hubbard does not contend that his conduct was "as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy." Thus, we need not address whether that statutory proviso constitutes an element of the offense or a matter of defense.

corporate law that entities are separate legal persons from their owners. Therefore, the fact that a public official uses public property to serve the interests of an entity, and also receives a financial benefit from another entity owned by the person who owns the first entity, does not necessarily mean that the official's use of public property is "for private benefit" that "would materially affect his ... financial interest." In other words, mere common ownership, standing alone, is not per se sufficient to support the fourth element of this offense. Ordinarily, there must be something else to connect the two entities -- in the circumstances, in the financial arrangements, or in the statements of the persons involved.

Here, that "something else" was present in the words of Hubbard himself. Shortly after Hubbard received a 10th $10,000 check from Capitol Cups, he telephoned Blades about the CSP patent-related work and said that he had "100,000 reasons to get this done." Indeed, something about the way Hubbard said it gave Blades the impression that Hubbard was referring to money. From this evidence, the jury could reasonably have concluded that Hubbard saw the CSP patent work

as directly connected to his Capitol Cups payments. It was not necessary for the State to show that the patent work convinced Capitol Cups to hire Hubbard initially or that the patent work actually affected the longevity of that relationship. Rather, to overcome the legal implications of separate corporate identities, it was sufficient for the State to show that Hubbard understood the CSP patent work to be on the basis of, and in furtherance of, his payments from Capitol Cups.

Thus, the State's evidence was sufficient to support the jury's conclusion that Hubbard used Blades's time and labor "for [Hubbard's] private benefit" that "would materially affect his ... financial interest." Accordingly, we affirm the Court of Criminal Appeals' judgment as to Hubbard's conviction on count 14.

E. Representing SiO2 Medical Products, Inc., before executive branch (counts 12-13)

Hubbard was convicted on two counts of representing, for compensation, a business entity before an executive department or agency, in violation of § 36-25-1.1, Ala. Code 1975. These counts were based on Hubbard's obtaining meetings with executive-branch officials on behalf of SiO2 Medical Products,

Inc. ("SiO2"), another Abrams-controlled company, while Hubbard was receiving consulting payments from Capitol Cups.

1. Facts relating to counts 12-13

Abrams owned another business, SiO2, that manufactured vials for biotechnological drugs. The vials were required to be manufactured in a sterile environment, which required special employee training. Thus, Abrams began seeking funding from the Alabama government to build a training center.

Abrams learned that another company had obtained funding for a training center from a fund controlled by the Governor. Accordingly, Abrams asked Hubbard to help set up a meeting with then Governor Robert Bentley. Hubbard had his legislative executive assistant arrange two meetings for Abrams -- one with then Governor Bentley and the other with Secretary of Commerce Greg Canfield. At that time, Hubbard was receiving payments under his consulting contract with Capitol Cups.

2. Discussion regarding counts 12-13

The Ethics Code section under which Hubbard was convicted provides:

> "No member of the Legislature, for a fee, reward, or other compensation, in addition to that

> received in his or her official capacity, shall represent any person, firm, corporation, or other business entity before an executive department or agency."

§ 36-25-1.1, Ala. Code 1975. Thus, the State was required to prove (1) that Hubbard was a member of the legislature (2) who represented a person, firm, corporation, or other business entity (3) before an executive department or agency (4) for a fee, reward, or other compensation (in addition to that received in his official capacity), and (5) that he did so intentionally (see § 36-25-27(a)(1)).

Hubbard challenges the fourth element, arguing that the State failed to present evidence that he arranged the SiO2 meetings with executive-branch officials "for" the compensation he received from Capitol Cups. That is, he contends that there was no evidence of a connection between his representation of SiO2 and his compensation from Capitol Cups.[19] The Court of Criminal Appeals held that the State presented sufficient evidence to support these counts. Hubbard v. State, ___ So. 3d at ___-___.

---

[19]Hubbard does not argue that his arranging of meetings was not "represent[ation]" of SiO2. Therefore, we need not address whether the evidence supported the second element of the offense.

In reviewing the sufficiency of the evidence, we determine whether, at the time the motion for a judgment of acquittal was made, the evidence supported a reasonable inference of guilt, viewing the evidence in the light most favorable to the State. Ex parte Burton, 783 So. 2d at 890-91. Under § 36-25-1.1, the fourth element of this offense requires that the legislator's representation be "for" nonofficial compensation. In this context, "for" plainly carries the sense of "in exchange for." See Merriam-Webster's Collegiate Dictionary 488 (11th ed. 2003) (listing part of definition 8a of "for" as "a function word to indicate equivalence in exchange <$10 [for] a hat>"). Logically, then, this reference in the statute to an exchange requires evidence of a causal link between the representation and the compensation. Moreover, as we similarly emphasized in our analysis of count 14, mere common ownership of the two companies involved is not sufficient to establish such a link.

Here, the State's evidence was sufficient to support an inference of a causal link between Hubbard's compensation from Capitol Cups and his arranging meetings with executive-branch officials for SiO2. As we discussed in the context of count

14, shortly after having received $100,000 from Capitol Cups, an Abrams-controlled company, Hubbard told Blades that he had "100,000 reasons" to secure a patent for CSP, another Abrams-controlled company. From this evidence, the jury could reasonably have inferred that Hubbard was willing to do whatever was necessary to assist companies controlled by Abrams, on the basis of, and in furtherance of, the payments from Capitol Cups. Thus, the jury could reasonably have concluded that Hubbard's arranging of meetings between SiO2 and executive-branch officials was motivated by his compensation from Capitol Cups, providing the causal link between the representation and the compensation.

Therefore, the State presented evidence sufficient to support the jury's conclusion that Hubbard represented a corporation before an executive department or agency "for" nonofficial compensation. Accordingly, we affirm the Court of Criminal Appeals' judgment as to Hubbard's convictions on counts 12 and 13.

III. Conclusion

Our role as Justices is not to praise or question the wisdom of the Ethics Code or to reprove or excuse Hubbard's

behavior. We must interpret and apply the law. And every person accused of breaking the law -- even one who had a hand in creating that law -- is entitled to (and bound by) the same rules of legal interpretation. When charged with a crime, public officials must be treated no better -- and no worse -- than other citizens in this State where all are guaranteed equal justice under law.

We affirm the judgment of the Court of Criminal Appeals as to counts 6, 10, 11, 12, 13, and 14. We reverse the judgment as to counts 16, 17, 18, 19, and 23 and remand this case to the Court of Criminal Appeals for further proceedings consistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Mendheim and Stewart, JJ., concur.

Parker, C.J., concurs specially.

Bolin, Wise, and Bryan, JJ., concur in part and concur in the result in part.

Sellers, J., concurs in part and dissents in part.

Shaw and Mitchell, JJ., recuse themselves.

1180047

PARKER, Chief Justice (concurring specially).

I write specially to address the definition of "principal" in § 36-25-1(24), Ala. Code 1975. I would go further than the main opinion and hold that, as a matter of law, the phrase "person or business which employs, hires, or otherwise retains a lobbyist" does not include owners, directors, officers, employees, or other individuals associated with a corporate entity if the lobbyist represents the entity and not the individual personally.

Alabama's "Code of Ethics for Public Officials, Employees, Etc.," §§ 36-25-1 to -30 ("Ethics Code"), defines a "principal" as "[a] person or business which employs, hires, or otherwise retains a lobbyist." § 36-25-1(24). Michael Gregory Hubbard argues that this definition plainly refers only to a person or corporate entity that hires a lobbyist to lobby on behalf of that person or entity and that the definition does not include individuals associated with such an entity. In support, Hubbard contends that the language of the definition assumes a contractual relationship between the principal and lobbyist and that that relationship is absent between a lobbyist and an individual corporate agent.

The State, by contrast, argues that the definition plainly includes associated individuals if they participate in hiring or supervising the entity's lobbyist. In support, the State points out that a person responsible for hiring employees of an entity is commonly said to "hire" those employees. For example, a law firm's hiring partner is commonly said to "hire" associates, even though the associates sign a contract with the firm.

The State relies on Ex parte Hicks, 153 So. 3d 53 (Ala. 2014), in which this Court observed that the word "child" in § 26-15-3.2(a), Ala. Code 1975, plainly "'encompass[ed] all children -- born and unborn.'" Id. at 59 (quoting Ex parte Ankrom, 152 So. 3d 397, 411 (Ala. 2013)). But there is a crucial distinction between Hicks and this case. Here, Hubbard presents a facially reasonable interpretation of the definition of "principal," based on the underlying question of who can properly be said to have legally "employ[ed], hire[d], or otherwise retain[ed]" a corporate lobbyist. In contrast, the Hicks defendant's interpretation of "child," as excluding unborn children, was patently not a reasonable one. Id. at 59-60.

Unlike in Hicks, here each party advances a plausible reading of the statute, and neither is patently unreasonable. See S & S Distrib. Co. v. Town of New Hope, 334 So. 2d 905, 907 (Ala. 1976) ("'A statute ... is ambiguous when it is capable of being understood by reasonably well-informed persons in either of two or more senses.'" (quoting State ex rel. Neelen v. Lucas, 24 Wis. 2d 262, 267, 128 N.W.2d 425, 428 (1964)); Slagle v. Ross, 125 So. 3d 117, 136 (Ala. 2012) (Shaw, J., concurring in result in part and dissenting in part) ("The [statute] is susceptible to at least two reasonable interpretations; therefore, it is ambiguous ...."). Therefore, I would hold the definition of "principal" ambiguous as applied to this case and proceed to apply principles of statutory construction.

"Statutory language 'cannot be construed in a vacuum.'" Sturgeon v. Frost, ___ U.S. ___, ___, 136 S. Ct. 1061, 1070 (2016) (quoting Roberts v. Sea-Land Servs., Inc., 566 U.S. 93, 101 (2012)). When a statute is ambiguous, courts attempt to construe its language within the broader context of general principles of law governing similar persons, things, or relationships. See 82 C.J.S. Statutes § 472 (2009) ("Each

statute is to be construed in the context of the existing law and as a part of a general and uniform system of jurisprudence."); 73 Am. Jur. 2d Statutes § 91 (2012) ("[A] statute ... is to be read in connection with[] the whole body of the law."); 2B Norman J. Singer & Shambie Singer, Sutherland Statutes and Statutory Construction § 50:1 (7th ed. 2012) ("[L]egislation is interpreted in the light of the common law and the scheme of jurisprudence existing at the time of its enactment."); id. § 53:3 ("[I]nterpretation of a doubtful statute may be influenced by the language of other statutes which are not specifically related, but which apply to similar persons, things, or relationships."). Thus, in this context of corporate entities, employees, and lobbyists, our construction of the words "person or business which employs, hires, or otherwise retains a lobbyist" must be informed by general principles of law regarding corporate action.

As the main opinion recognizes, a fundamental principle of corporate law is that a corporate entity has a legal identity separate from its owners, directors, officers, and employees. As explained in the very first section of a

standard corporate-law treatise, "[a] corporation is a form of business association, having the rights, relations, and characteristic attributes of a legal entity distinct from that of the persons who compose it or act for it in exercising its functions." 1 Fletcher Cyclopedia of the Law of Corporations § 1 (2015) (emphasis added). As Howard P. Walthall, professor of business law at Cumberland School of Law, puts it:

> "The [Alabama] Business Code treats business corporations as jural entities that exist separate and apart from those persons, such as shareholders, officers, and directors, whose activities are channeled through the entity ....
>
> "... [U]pon the commencement of corporate existence, ... a new legal being comes into existence. And that new legal being ... is separate and distinct from those who act through it ...."

Brief of Howard P. Walthall as amicus curiae, at pp. 6-7. This distinction between entities and natural persons associated with them is embedded throughout our State's business code. See, e.g., §§ 10A-2-8.30(d) (director of corporation not personally liable for performance of official duties in compliance with Code section) and 10A-2-8.42(d) (same for officers), Ala. Code 1975.

As a corollary to this distinction, another important principle is that corporate agents do not ordinarily act on

their own behalf, but rather act on behalf of the entity they represent. See 19 C.J.S. Corporations § 673 (2018) ("The agent of a corporation stands in place of the corporation itself in the line of his or her assigned duties, and any acts within his or her authorized employment are the acts of the corporation ...." (footnote omitted)); 18B Am. Jur. 2d Corporations § 1310 (2015) ("A corporate entity and its agents are not distinct parties for contracting purposes because the corporation ... may only act through its officers, directors, and agents."); In re Infocure Sec. Litig., 210 F. Supp. 2d 1331, 1359 (N.D. Ga. 2002) ("[It is basic corporation law that, i]f a corporate officer acts on behalf of the corporation, then he is not considered to be acting in his individual capacity, unless so stated."). As Professor Walthall observes, "a corporate officer ... carrying out his or her duties ... is not acting on his or her own, but is fulfilling a role within the separate corporate structure." Walthall's amicus curiae brief, at p. 10.

A third relevant corporate-law principle is that, in light of the second principle, a representative of an entity is employed or contracted with by the entity itself, not the

individual corporate agents who perform the function of hiring or overseeing the representative. See 1 Fletcher Cyclopedia of the Law of Corporations § 29 ("[T]he corporation ... is the employing party in an employment relationship.").

Taken together, these principles of corporate law strongly suggest that, when an individual owner, director, officer, or employee hires or oversees a corporate lobbyist, the "person or business which employs, hires, or otherwise retains [the] lobbyist" is the entity, not the individual.

The State attempts to sidestep these corporate-law principles, arguing that an entity can act only through individuals who act on its behalf. Although that is true, it misses the point. Acts of individuals on behalf of an entity are just that -- acts on behalf of the entity. "[T]he acts of [a] corporation's agents within their authorized employment are the acts of the corporation." 2 Fletcher Cyclopedia of the Law of Corporations § 275 (2014). Thus, although individuals do the hiring and supervising of corporate lobbyists, that does not mean that those individuals thereby become "principals" of those lobbyists.

As an additional aid in construing an ambiguous statutory definition, courts examine whether the legislature omitted from the definition relevant language that the legislature included in other statutory provisions. See 2A Norman J. Singer & Shambie Singer, Sutherland Statutes and Statutory Construction § 46:6 (7th ed. 2019-2020 Supp.) ("Where a legislature includes particular language in one section of a statute but omits it from another section of the same or a related act, it generally acts intentionally and purposely in the disparate inclusion or exclusion."); 2B Singer, supra, § 51:2 ("[W]here a legislature inserts a provision in only one of two statutes that deal with a closely related subject, courts construe the omission as deliberate rather than inadvertent."). Significantly, the Ethics Code defines "lobbyist" to include certain subordinates of a lobbyist, including "[a]n employee, a paid consultant, or a member of the staff of a lobbyist." § 36-25-1(21)a.4, Ala. Code 1975. As seen from that definition, if the Legislature had intended "principal" to include an entity's individual agents who hire or oversee a lobbyist, it knew how to do so. The fact that the Legislature did not suggests that such agents are not

embraced by the definition of "principal." See City of Pinson v. Utilities Bd. of Oneonta, 986 So. 2d 367, 373 (Ala. 2007) ("The legislature did not create such an exemption, even though it has done so in the case of [a similar subject]. ... 'It is not proper for a court to read into the statute something which the legislature did not include although it could have easily done so.'").

The State, however, takes the converse position: If the Legislature had intended to exclude corporate agents from the definition of "principal," it would have done so expressly. As examples of this kind of express exclusion, the State points to Kentucky's and South Carolina's exclusions, from their definitions of terms parallel to Alabama's "principal," of any "employee, officer, or shareholder of a person who employs a lobbyist." Ky. Rev. Stat. Ann. § 6.611(12); S.C. Code Ann. § 2-17-10(14). The State would have us infer that, absent a similar exclusion here, the Legislature intended to include these individuals.

I am not persuaded by this argument. Courts' interpretations of other states' statutes may have value, particularly when our State's language has been borrowed from

them. See 73 Am. Jur. 2d Statutes § 98 (2012) ("In interpreting statutes, a court may consider similar provisions in sister jurisdictions."); 82 C.J.S. Statutes § 486 (2009) ("When a statute is patterned after a statute of another jurisdiction, whether state or federal, it is appropriate to consider interpretations of the statute in the jurisdiction from which it has been borrowed."). Yet the text itself of those statutes carries little interpretive relevance, in the absence of such borrowing or other historical relationship between those statutes and ours. Here, there is no evidence that the Alabama Legislature, in defining "principal," borrowed language from Kentucky or South Carolina but left out their exclusions. Compare Ky. Rev. Stat. Ann. § 6.611(12) (2010) (defining "[e]mployer" primarily as "any person who engages a legislative agent") and S.C. Code Ann. § 2-17-10(14) (2010) (defining "[l]obbyist's principal" primarily as "the person on whose behalf and for whose benefit the lobbyist engages in lobbying and who directly employs, appoints, or retains a lobbyist to engage in lobbying") with § 36-25-1(24), Ala. Code 1975 (defining "principal" as "[a] person or business which employs, hires, or otherwise retains a

lobbyist"). Rather, it appears that the legislatures of those states simply chose to make explicit in their definitions what seems to already be implicit in ours: a corporate agent is not a "principal" of a corporate lobbyist.

For further help in construing an ambiguous statute, courts consider how the statute has been interpreted by government agencies. Ex parte Chesnut, 208 So. 3d 624, 640 (Ala. 2016). This principle is especially applicable when the relevant agency has been empowered to issue interpretive opinions providing a "safe harbor" from liability for those who comply with them. Cf. United States v. Mead Corp., 533 U.S. 2018, 229-30 (2001). Here, the Alabama Ethics Commission has been tasked with advising public officials and employees on the meaning and application of the Ethics Code, including issuing safe-harbor opinions. See §§ 36-25-4(a)(9)-(10) and 36-25-4.2(a)-(b), Ala. Code 1975.

However, the Commission has not issued a permanent, definitive opinion on whether "principal" includes corporate agents for purposes of § 36-25-5.1(a)'s prohibition of soliciting or receiving things of value from a principal. As the main opinion notes, the Court of Criminal Appeals, in

holding that "principal" includes corporate agents, relied on the following testimony of James Sumner, former director of the Commission:

> "'What we have always said is that, clearly the person who signs on behalf of that business is a principal. But there are others, decision makers, who are officers. And of those two, can be and shall be, considered as principals as well. That could be the officers. It could be like an executive committee of the company and -- and so forth, and -- but it is -- for a company, it is broader than just one individual.'"

Hubbard v. State, [Ms. CR-16-0012, Aug. 27, 2018] ___ So. 3d ___, ___ (Ala. Crim. App. 2018).

There are several problems with the Court of Criminal Appeals' reliance on this testimony. First, Sumner did not identify any instance in which the Commission had publicly interpreted "principal" to include corporate officers or decision-makers. The Commission's interpretation cannot be established by testimony of an individual staff member without some written pronouncement by the Commission. See Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 212 (1988) ("We have never applied the principle of [administrative deference] to agency litigating positions that are wholly unsupported by regulations, rulings, or administrative practice. To the

contrary, we have declined to give deference to an agency counsel's interpretation of a statute where the agency itself has articulated no position on the question ...."); cf. State v. Louisville & Nashville R.R., 398 So. 2d 288, 290 (Ala. Civ. App. 1980) ("The failure of the [Department of Revenue] to attempt to collect a tax does not establish a precedent nor constitute an administrative ruling or interpretation absent a formal ruling or order."), reversed on other grounds, Ex parte Louisville & Nashville R.R., 398 So. 2d 291 (Ala. 1981). Indeed, a private, unannounced understanding of Commission staff would be a dubious basis for sustaining a criminal conviction. See United States v. Farley, 11 F.3d 1385, 1390 (7th Cir. 1993) ("Courts may not ... rely on unpublished opinions of agency staff.").

Second, Sumner's testimony that the Commission has "always said" that certain corporate agents are "principals" is belied by the fact that the Commission does not consider them "principals" under other portions of the Ethics Code. In accordance with §§ 36-25-18(b)(6) and 36-25-19(a), "principal[s]" must file reports and statements with the Commission. It is undisputed that the Commission has never

required individual directors or officers to file those reports and statements.

Third, even if Sumner's testimony were an accurate statement of the Commission's interpretation, an executive agency's interpretation of a statute is not binding on the courts.

> "[A] reviewing court will accord an interpretation placed on a statute or an ordinance by an administrative agency charged with its enforcement great weight and deference. ... '[However], that deference has limits. When it appears that the agency's interpretation is unreasonable or unsupported by the law, deference is no longer due.'"

Chesnut, 208 So. 3d at 640 (quoting Alabama Dep't of Revenue v. American Equity Inv. Life Ins. Co., 169 So. 3d 1069, 1074 (Ala. Civ. App. 2015)). For the reasons discussed above, Sumner's interpretation appears to be unsupported by law and thus deserves little weight.

In sum, these principles of statutory construction strongly favor reading the Ethics Code's definition of "principal" as encompassing only those persons and businesses that are directly represented by a lobbyist. Accordingly, I would hold that, as a matter of law, the phrase "person or business which employs, hires, or otherwise retains a

lobbyist" does not include owners, shareholders, directors, officers, employees, or other individuals associated with a corporate entity if the lobbyist represents the entity and not the individual personally.[20]

[20]I recognize that an individual owner, director, officer, or employee could seek to evade the prohibition of § 36-25-5.1(a) by providing a thing of value to a public official and later claiming that the thing was from the individual personally rather than from the (principal) entity. However, this policy concern is addressed by the obvious reality that the capacity in which the individual provided the thing -- personally versus as an agent of the entity -- will often be a question of fact for a jury. (Here, the State does not argue that Will Brooke gave his employment assistance or financial advice as an agent of the Business Council of Alabama.) Beyond that, any policy concern about evasion is a matter for the Legislature. It is not the function of the courts to address such concerns by adopting an expansive interpretation of "principal" that is not supported by the above principles of construction.

1180047

BOLIN, Justice (concurring in part and concurring in the result in part).

I fully concur in the holding of the main opinion regarding counts 16, 17, 18, 19, and 23. I concur in the result only as to counts 6, 10, 11, 12, 13, and 14.

I agree with Chief Justice Parker's conclusion in his special writing that the phrase "person or business which employs, hires, or otherwise retains a lobbyist" in § 36-25-1 (24), Ala. Code 1975, does not include owners, shareholders, directors, officers, employees, or other individuals associated with a corporate entity if the lobbyist represents the entity and not the individual personally.

1180047

BRYAN, Justice (concurring in part and concurring in the result in part).

I concur to affirm the Court of Criminal Appeals' judgment as to counts 6 and 10 and to reverse its judgment affirming the convictions on counts 16 through 19 and count 23. I concur in the result insofar as its judgment as to counts 11 through 14 are affirmed. I write specially to express why I believe the convictions on count 6 and counts 10 through 14 must be affirmed.

I must begin by noting that I have serious concerns about some of the language used in the current version of the Alabama Ethics Code, § 36-25-1 et seq., Ala. Code 1975 ("the Ethics Code"), some of which I find to be inexplicably broad and somewhat confusing. Thus, I encourage the legislature to take immediate action to once again revise and clarify the language of the Ethics Code. However, after a thorough and exhaustive review of the pertinent provisions of the Ethics Code and the arguments presented by Michael Gregory Hubbard to this Court, I can reach no other conclusion than that the convictions on count 6 and counts 10 through 14 must be affirmed. Even under the most broad reading of the specific provisions of the Ethics Code at issue in this case, the

record contains several key facts that require me to conclude that a reasonable juror, faced with the evidence that was presented, could have found Hubbard guilty of violating the Ethics Code as charged in count 6 and counts 10 through 14. See Ex parte Burton, 783 So. 2d 887, 890-91 (Ala. 2000) (noting that, when viewing the evidence in the light most favorable to the State, as we must, we may consider only whether the jury could have, by fair inference, found the defendant guilty).

Specifically, in counts 6 and 10, for the reasons set forth in the main opinion, the jury could have reasonably concluded that the payments made to Hubbard by American Pharmacy Cooperative, Inc. ("APCI"), and Edgenuity, Inc., were provided for reasons related to Hubbard's public service. Regarding Hubbard's contention that his employment agreements with APCI and Edgenuity were for work performed out of state, the jury could have concluded (1) that Hubbard performed work for APCI in state and (2) that Hubbard actually knew and understood that the work he was performing, even out of state, was not allowed under the Ethics Code if the payments he was receiving for that work were for reasons related to his public

service. For example, the jury could have concluded that Hubbard was warned by Josh Blades, his chief of staff, not to vote on legislation that would have greatly benefited APCI but that Hubbard voted on the legislation anyway -- an action obviously taken in the State of Alabama -- even after taking actions that indicated that he knew that he should not vote on the legislation. In addition, the jury heard evidence from James Sumner, former director of the Alabama Ethics Commission, indicating that Hubbard was repeatedly told that he could not use his official position or "the mantle of his office" to benefit himself or his business. Specifically, Sumner testified that he instructed Hubbard that, even though Hubbard was free to conduct business outside Alabama, he still could not "use [his] position to benefit [him]self, [his] business, [or his] family." Thus, the jury could have reasonably inferred that Hubbard knew that receiving compensation from APCI and Edgenuity for work related to his official position as Speaker of the House of Representatives -- whether in state or out of state -- was prohibited by the Ethics Code.

In counts 11 through 14, all of which involve Hubbard's dealings with Robert Abrams and Abrams's businesses, a reasonable juror could have concluded that, when Hubbard told Blades that he had "100,000 reasons" for Blades to secure a copy of a patent for Abrams, which was shortly after Hubbard received his 10th $10,000 check from Capitol Cups, Inc., Hubbard was expressing that he understood his arrangement with Abrams to be that Abrams paid him $10,000 a month and that, in return, Hubbard intended to use his position, or the time and labor of his staff -- the power of his office -- to do things that Abrams asked, such as obtain meetings in order to sell Capitol Cups' products, set up meetings for Abrams with the Governor and the Secretary of Commerce, and obtain a copy of a patent for one of Abrams's businesses.

I really do not know how I would have decided this case if I had been a Lee County juror tasked with hearing the evidence presented and making a determination of Hubbard's guilt or innocence. However, I was not a Lee County juror in this case and what I might have done if I had been a Lee County juror sitting on this case is irrelevant for purposes of deciding the issues presented to this Court at this time.

At this point, my position as a Justice allows me to consider only whether there was sufficient evidence from which the Lee County jurors who did actually sit on this case could have reasonably found Hubbard guilty. See Ex parte Burton, supra. Based on the above facts, I cannot conclude that the jury's verdict as to count 6 and counts 10 through 14 was not supported by sufficient evidence.

Finally, although a jury could have found Hubbard guilty of the crimes he was charged with in count 6 and counts 10 through 14, given my concerns about the current version of the Ethics Code, I am not entirely convinced that the sentences Hubbard received were the most appropriate form of punishment. The length of Hubbard's sentences, in comparison to his conduct, has been a concern since my initial consideration of this case. However, Hubbard did not challenge his sentences, nor did he ask this Court to consider whether the jury should have been instructed on misdemeanor charges rather than felonies. See § 36-25-27(a)(1) and (2), Ala. Code 1975. In light of the arguments that Hubbard did and did not present to this Court and the standard of review that must be applied to a judgment entered on a jury's verdict, I must conclude that

the Court of Criminal Appeals correctly affirmed his convictions on count 6 and counts 10 through 14.

Wise, J., concurs.

1180047

SELLERS, Justice (concurring in part and dissenting in part).

I concur with those parts of the main opinion reversing the Court of Criminal Appeals' judgment as to counts 16, 17, 18, 19, and 23. I dissent from those parts of the main opinion affirming the judgment as to counts 6, 10, 11, 12, 13, and 14.

From the outset, my review of this case has been based on what I believe to be fundamental principles of criminal law. Statutes imposing criminal penalties should be clear and concise to give reasonable persons subject to the statute's limitations on conduct fair notice of the penalty to be exacted when a specific line is crossed and a law is violated. See McBoyle v. United States, 283 U.S. 25 (1931), and Lanzetta v. New Jersey, 306 U.S. 451 (1939). If a law cannot be simply understood, then any punishment for its violation would be arbitrary and subject to speculation or, worse, prosecutorial manipulation. The law, especially as it relates to conduct deemed criminal, requires clear rules, easily discernible so that everyone can know with certainty what specific acts are forbidden and the concomitant consequences.

I am not convinced that all the statutes applied in this case are clear and concise, and I am troubled by a strained statutory interpretation that was aimed at finding criminal conduct on the part of Michael Gregory Hubbard. I am specifically concerned by the State's broad construction of the term "principal" in § 36-25-1(24), Ala. Code 1975, a statutory definition that is clearly unambiguous. That statute defines a "principal" as a "person or business which employs, hires, or otherwise retains a lobbyist." As pointed out in the main opinion, what qualifies a person or business as a principal is the act of employing, hiring, or otherwise retaining a lobbyist. The State's interpretation of the term broadens the definition to encompass individuals who were never designated as principals and who had no personal or direct involvement with the employing, hiring, or otherwise retaining of lobbyists. The Ethics Code, § 36-25-1 et seq., Ala. Code 1975, requires "principals" to register publicly. The State's overly broad definition deems many people to be principals who were never advised to register. Those people would be surprised to learn that they are principals under the State's interpretation and have apparently violated the Ethics

Code, subjecting themselves to potential criminal culpability never imagined or intended. In stretching the law in a direction never intended by the legislature, the State violates core principles of criminal law. I thus concur with that part of main opinion holding that the term "principal" does not include a member of the board of an entity that has employed, hired, or otherwise retained a lobbyist, especially when there is no evidence indicating that the member of the board was involved with employing, hiring, or otherwise retaining the entity's lobbyist.

I dissent from that part of the main opinion affirming the Court of Criminal Appeals' judgment as to counts 6 and 10, soliciting or receiving a thing of value from a principal. Section 36-25-1(34)b.10, Ala. Code 1975, exempts the following from the definition of a "thing of value":

> "Compensation and other benefits earned from a non-government employer, vendor, client, prospective employer, or other business relationship in the ordinary course of employment or non-governmental business activities under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's public service as a public official or public employee."

I read the statute's reference to "public service" as the exercise of an official's governmental authority. In my

opinion, compensation under the Ethics Code is not a "thing of value" unless it is given in exchange for the recipient's use of actual governmental power. To hold otherwise would appear to criminalize legitimate business arrangements in which part-time legislators and other part-time elected officials routinely engage. There are part-time officials who are slightly compensated for their official duties, but who are sustained by other employment and earn income outside their governmental positions. The State's interpretation of this statute could call into question employment arrangements of those officials and discourage qualified candidates who have outside employment from seeking political office or part-time government employment. Simply put, an elected official cannot be compensated for the specific use of his or her public office. Hubbard would have clearly violated § 36-25-1(34)b.10 had he used his office to advance legislative initiatives in Alabama for which he was specifically compensated. Because we are imposing a criminal penalty, we must strictly construe the statute and resolve any ambiguity in favor of Hubbard. Accordingly, I would reverse the Court of Criminal Appeals' judgment as to counts 6 and 10.

Further, I find the conviction under count 11, based on an alleged violation of § 36-25-5(a), Ala. Code 1975, i.e., that Hubbard used his official position as Speaker of the House of Representatives to obtain the consulting contract with Capitol Cups, Inc., or to increase his compensation under that contract, equally suspect. Section 36-25-5(a) provides:

> "No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. ..."

The evidence indicated that Hubbard sent two e-mails to a contact at Publix Super Markets, Inc., telephoned a contact for Waffle House restaurants, and visited Chick-fil-A's corporate headquarters in route to an official meeting. The evidence proved that Hubbard's efforts were futile and that none of the companies he solicited actually agreed to purchase Capitol Cups' product. Moreover, the evidence demonstrated that Capitol Cups entered into the consulting contract with Hubbard, not because he was Speaker of the House, but because he had experience in college athletics and sports media. Thus, I do not believe the evidence was sufficient to support

a conclusion that Hubbard used his official position or office to obtain the consulting contract with Capitol Cups. I also do not believe the evidence was sufficient to support a conclusion that, after obtaining the contract, Hubbard used his official position or office to increase his personal gain. He had already obtained the consulting contract because of his nongovernment experience. None of the direct communications at issue resulted in any of the proposed vendors contracting to purchase any cups or in any specific gain to Hubbard. For these reasons, I dissent from that part of the main opinion affirming the Court of Criminal Appeals' judgment as to count 11.

I further dissent from those parts of the main opinion affirming the Court of Criminal Appeals' judgment as to counts 12 and 13, because I find no support that Hubbard represented SiO2 Medical Products, Inc., a company in his legislative district, before an executive department or agency for nonofficial compensation in violation of § 36-25-1.1, Ala. Code 1975. Section 36-25-1.1 provides:

> "Lobbying includes promoting or attempting to influence the awarding of a grant or contract with any department or agency of the executive, legislative, or judicial branch of state government.

> "No member of the Legislature, for a fee, reward, or other compensation, in addition to that received in his or her official capacity, shall represent any person, firm, corporation, or other business entity before an executive department or agency."

Section 36-25-1.1 provides a definition of lobbying and precludes legislators from receiving payment to lobby an executive department or agency. The facts indicate that Hubbard made two telephone calls to arrange for Robert Abrams to meet with the Governor and Secretary of Commerce. The purpose of those meetings was to discuss funding from the State to build a training facility in Alabama for SiO2. This type of "work" would be normal for any legislator and would be deemed a prime example of acceptable and ordinary constituent services. The State implied that Hubbard arranged the meetings on behalf of Si02 in order to continue receiving compensation from his consulting contract with Capitol Cups. But a legislator calling an executive agency to set up a meeting (that the legislator does not attend) on behalf of a company in his legislative district is a far cry from representing the company to influence the award for a grant or contract. Given the expansion of government and growth of executive agencies with funds for any number of worthy

projects, a legislator becomes a de facto ombudsman to connect constituents with an agency that can provide or explain the availability of a program that might be of assistance to the legislator's constituents or their business. To violate § 36-25-1.1, a legislator would have to be specifically paid to be an advocate for a particular project. Even reviewing the evidence in a light most favorable to the State, I cannot find sufficient evidence that Hubbard was motivated by his contract with Capitol Cups to arrange for two meetings for a constituent. Moreover, the term "represent" means much more than making a telephone call to schedule a meeting; rather, it implies an insistent advocacy to obtain a specific grant or contract for remuneration with a direct connection to the representation. In this case, merely inquiring whether a training facility might be available does not violate § 36-25-1.1. Attempting to link payment under one contract for a particular purpose to another company, for what can only be described as de minimis contact with an executive agency, is simply too tenuous a connection to imply criminality. Accordingly, I would reverse the Court of Criminal Appeals' judgment as to counts 12 and 13.

I also dissent from the main opinion's affirmance of the Court of Criminal Appeals' judgment as to count 14, using public property for a private benefit. Section 36-25-5(c), Ala. Code 1975, reads:

> "No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, [Ala. Code 1975,] which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. ..."

Section 36-25-5(c) prohibits a public official from using the publicly supplied facilities of his or her office, which would include publicly paid staff, to advance his or her personal financial interest in a material way. The use of public facilities must be directly related to the material advancement of the public official's financial interest and not tangential to the official's nongovernmental lawful employment. In this case, it was undisputed that Abrams controlled both Capitol Cups and SiO2, in addition to other companies. The State claimed that, because Hubbard was getting paid from Abrams through Capitol Cups, he benefited

financially from assisting Abrams with the patent issue. Hubbard, on the other hand, asserted that his actions in assisting Abrams with the SiO2 patent issue were ordinary constituent services.[21]

Although Hubbard's chief of staff made several telephone calls concerning the patent issue, evidence of such calls is insufficient to support a conclusion that those calls materially affected Hubbard's financial interest. In my opinion, § 36-25-5(c) requires a showing of consistent action for personal financial gain, not a de minimis use that is insignificant or inadvertent when compared to the totality of the work of the official's office and his or her financial interests. Because I do not agree with the main opinion's

---

[21]In conflict with the main opinion, the Court of Criminal Appeals' opinion and the parties' briefs to this Court suggest that SiO2, not CSP Technologies, Inc., was involved in patent litigation. Although the record does contain a copy of the patent indicating that CSP was an assignee of the patent, there was no direct testimony on that point. Rather, Abrams testified that, in the summer of 2013, SiO2 had received notice that one of its significant patents had been granted but that the official patent certificate had not been printed in a timely manner. Abrams stated that SiO2 was involved in major patent litigation and that those legal proceedings had been protracted and expensive. According to Abrams, the new patent would have settled some of the issues in the patent litigation, but delivery of the official printed patent had been delayed by approximately a month.

broad interpretation of § 36-25-5(c), I would reverse the Court of Criminal Appeals' judgment as to count 14.

Finally, and with respect to all counts, I note that, in order for there to be a crime, there must be criminal intent or, as Blackstone commented: a "vicious will." See Morissette v. United States, 342 U.S. 246, 251 (1952)(citing 4 Bl. Comm. 21). Severely punishing the inadvertent or unintentional breaking of a law omits an appeal to reasonableness. The adage that "reason is the life of the law" is an acknowledgment that fair-mindedness animates the law; the law as applied in the main opinion is neither fair nor reasonable in its application or interpretation.

Hubbard regularly and routinely contacted the Alabama Ethics Commission to establish and maintain his compliance with the Ethics Code. Hubbard's conduct exhibited no "vicious will" to violate the law; he attempted to stay within its confines. His culpability is not based on readily defined violations of the law but is maintained primarily by statutory interpretations that are suspect and convoluted. To support a conviction, laws governing the conduct of public officials must be clear and not manipulated to criminalize politics. In

Castillo v. United States, 530 U.S. 120, 131 (2000), the United States Supreme Court discussed ambiguous statutes and cited approvingly Staples v. United States, 511 U.S. 600, 619 n. 17 (1994), stating that the rule of lenity requires that "ambiguous criminal statute[s] ... be construed in favor of the accused." In Ex parte Bertram, 884 So. 2d 889, 892 (Ala. 2003), this Court adopted that principle, agreeing that any ambiguity in a criminal statute must be construed against the State and in favor of the defendant; to do otherwise is "contrary to the traditional, well-settled rules of statutory construction."[22] The laws should not be used to remove political leaders merely because their leadership is abrasive or strident. Even public officials accused of criminal activity are presumed innocent, and the burden is on the State to prove guilt beyond a reasonable doubt. Accordingly, I respectfully dissent from those parts of the main opinion affirming the Court of Criminal Appeals' judgment as to counts 6, 10, 11, 12, 13, and 14.

[22]As indirect support for my belief that the law here is ambiguous is the fact that this case was orally argued on June 4, 2019, and it has taken us over 10 months to render a decision. If the criminal statutes in question were clear, concise, and unambiguous, no doubt a decision would have been reached earlier.

1180047

SHAW, Justice (statement of recusal).

I have known the petitioner for many years, and he and I attend the same church. In order to avoid any appearance of impropriety, I have recused myself from the cases in which he has been the petitioner since March 2016. See, e.g., Ex parte Hubbard (case no. 1150631). Therefore, I have not discussed any of the issues in this case with my colleagues, and I have not voted or otherwise participated in this case in any manner.

1180047

MITCHELL, Justice (statement of recusal).

The law firm at which I was a shareholder before I became an Associate Justice on this Court represented person(s) in connection with this case while I was an attorney there. I therefore recuse myself.

Appendix B: Opinion of Alabama Court of Criminal Appeals

Rel: August 27, 2018

ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2017-2018

CR-16-0012

Michael Gregory Hubbard

v.

State of Alabama

Appeal from Lee Circuit Court
(CC-14-565)

WELCH, Judge.

Michael Gregory Hubbard, the former Speaker of the Alabama House of Representatives, was indicted by a special grand jury on 23 charges related to the alleged abuses of the official position or public office he occupied at the time of

the offenses. Hubbard was tried by a jury and was convicted of 12 counts -- Counts 5, 6, 10-14, 16-19, and 23. The trial judge sentenced Hubbard to several terms of imprisonment. Hubbard appeals. We affirm as to 11 counts and reverse and render a judgment as to 1 count.

Summary of Counts and Sentences

Count 5 charged that Hubbard violated § 36-25-5(b), Ala. Code 1975, by intentionally voting for legislation -- Senate Bill 143 of the 2013 Regular Legislative Session -- when he knew or should have known that he had a conflict of interest. The trial court imposed a sentence of 10 years' imprisonment on Hubbard's conviction for that offense; that sentence was split, and Hubbard was ordered to serve 2 years, followed by 8 years' probation. The trial court ordered Hubbard to pay a $30,000 fine, court costs, a $350 bail-bond fee, and a $500 victims compensation assessment.

Count 6 charged that Hubbard, a public official, violated § 36-25-5.1(a), Ala. Code 1975, by intentionally soliciting or receiving a thing of value, i.e., currency or checks, from a principal, American Pharmacy Cooperative, Inc. ("APCI"). The trial court imposed a sentence of 10 years' imprisonment on

Hubbard's conviction for that offense; that sentence was split, and Hubbard was ordered to serve 2 years, followed by 8 years' probation, that sentence to run concurrently with Count 5. The trial court ordered Hubbard to pay a $30,000 fine, court costs, and a $500 victims compensation assessment.

Count 10 charged that Hubbard, a public official, violated § 36-25-5.1(a), Ala. Code 1975, by intentionally soliciting or receiving a thing of value, i.e., currency or checks, from a principal, Edgenuity, Inc., and/or E2020, Inc. The trial court imposed a sentence of 6 years' imprisonment; that sentence was split, and Hubbard was ordered to serve 18 months, followed by 4 years' probation, that sentence to run concurrently with the sentences on all other counts. The trial court ordered Hubbard to pay a $30,000 fine, court costs, and a $500 victims compensation assessment.

Count 11 charged that Hubbard used his official position or office to obtain personal gain, i.e., currency or checks, from Robert Abrams d/b/a CV Holdings, LLC, for himself, or a business with which Hubbard was associated, Auburn Network, when such use and gain were not otherwise specifically authorized by law, in violation of § 36-25-5(a), Ala. Code

1975. The trial court imposed a sentence of 10 years' imprisonment; that sentence was split, and Hubbard was ordered to serve 2 years, followed by 8 years' probation, this sentence to run concurrently with the sentences imposed for Counts 12, 13, and 14 and consecutively with those imposed for Counts 5 and 6. The trial court also ordered Hubbard to pay a $30,000 fine, court costs, and a $500 victims compensation assessment.

Count 12 alleged that Hubbard, a public official, violated § 36-25-1.1, Ala. Code 1975, intentionally, by representing Robert Abrams d/b/a CV Holdings, LLC, before an executive department or agency, the Alabama Department of Commerce, for compensation in addition to that received in his official capacity. The trial court imposed a sentence of 10 years' imprisonment; that sentence was split, and Hubbard was ordered to serve 2 years, followed by 8 years' probation, the sentence to run concurrently with the sentences for Counts 11, 13, and 14, and consecutively to the sentences imposed for Counts 5 and 6. The trial court also ordered Hubbard to pay a $20,000 fine, court costs, and a $500 victims compensation assessment.

Count 13 charged that Hubbard, a public official, violated § 36-25-1.1, Ala. Code 1975, by intentionally, by representing Robert Abrams d/b/a CV Holdings, LLC, before the Alabama Governor for compensation in addition to that received in his official capacity. The trial court imposed a sentence of 10 years' imprisonment; that sentence was split to serve 2 years, followed by 8 years' probation, the sentence to run concurrently with the sentences imposed for Counts 11, 12, and 14, and consecutively to the sentences imposed for Counts 5 and 6. The trial court also ordered Hubbard to pay a $30,000 fine, court costs, and a $500 victims compensation assessment.

Count 14 charged that Hubbard, a public official, violated § 36-25-5(c), Ala. Code 1975, because he intentionally used, or caused to be used, time and/or labor -- his own and that of his chief of staff, Josh Blades -- for his private benefit, specifically, that Hubbard received payment, i.e., currency or checks, from Robert Abrams, and the payment materially affected his financial interest in a way not otherwise provided by law. The trial court imposed a sentence of 10 years' imprisonment; that sentence was split to serve 2 years, followed by 8 years' probation, the sentence to run

concurrently with the sentences imposed for Counts 11, 12, and 13, and consecutively to the sentences imposed for Counts 5 and 6. The trial court also ordered Hubbard to pay a $30,000 fine, court costs, and a $500 victims compensation assessment.

Count 16 charged that Hubbard, a public official, violated § 36-25-5.1(a), Ala. Code 1975, by intentionally soliciting or receiving a thing of value, i.e., a $150,0000 investment in Craftmaster Printers, from a principal, Will Brooke, a board member of the Business Council of Alabama ("BCA"). The trial court imposed a sentence of 5 years' imprisonment; that sentence was split, and Hubbard was ordered to serve 18 months, followed by 3 1/2 years' probation, the sentence to run concurrently with all other counts. The trial court also imposed court costs and a $100 victims compensation assessment.

Count 17 charged that Hubbard, a public official, violated § 36-25-5.1(a), Ala. Code 1975, by intentionally soliciting or receiving a thing of value, a $150,0000 investment in Craftmaster Printers, from a principal, James Holbrook and/or Sterne Agee Group, Inc. The trial court imposed a sentence of 10 years' imprisonment; that sentence

was split, and Hubbard was ordered to serve 2 years, followed by 8 years' probation, the sentence to run concurrently with all other counts. The trial court also ordered Hubbard to pay a $20,000 fine, court costs, and a $500 victims compensation assessment.

Count 18 charged that Hubbard, a public official, violated § 36-25-5.1(a), Ala. Code 1975, by intentionally soliciting or receiving a thing of value, a $150,0000 investment in Craftmaster Printers, from a principal, Jimmy Rane, president of Great Southern Wood. The trial court imposed a sentence of 5 years' imprisonment; that sentence was split, and Hubbard was ordered to serve 18 months, followed by 3 1/2 years' probation, the sentence to run concurrently with all other counts. The trial court also ordered Hubbard to pay court costs and a $100 victims compensation assessment.

Count 19 charged that Hubbard, a public official, violated § 36-25-5.1(a), Ala. Code 1975, by intentionally soliciting or receiving a thing of value, a $150,0000 investment in Craftmaster Printers, from a principal, Robert Burton, president of Hoar Construction. The trial court imposed a sentence of 5 years' imprisonment; that sentence was

split, and Hubbard was ordered to serve 18 months, followed by 3 1/2 years' probation, the sentence to run concurrently with all other counts. The trial court also ordered Hubbard to pay court costs and a $100 victims compensation assessment.

Count 23 charged that Hubbard, a public official, violated § 36-25-5.1(a), Ala. Code, by intentionally soliciting or receiving a thing of value, assistance with obtaining new clients for Auburn Network and/or financial advice regarding Craftmaster Printers, from a principal, Will Brooke, a board member of the BCA. The trial court imposed a sentence of 5 years' imprisonment; that sentence was split, and Hubbard was ordered to serve 18 months, followed by 3 1/2 years' probation, the sentence to run concurrently with all other counts. The trial court also ordered Hubbard to pay court costs and a $100 victims compensation assessment.

The trial court denied the State's request for restitution. Hubbard timely filed a motion for a new trial, which was denied by operation of law. This appeal follows.

Statement of the Facts

Hubbard was elected to the Alabama House of Representatives in 1998, and in 2004 he became the minority

leader in the House. He was later named the chairman of Alabama Republican Party. Hubbard and other key members of the Republican Party created a plan to overturn the Democratic majority in both houses of the Alabama Legislature, and in November of 2010 the plan came to fruition. Part of the Republican platform was called the "Handshake with Alabama," which was described as a policy agenda the Republican candidates pledged to promote when they were elected, and ethics reform was part of the Handshake with Alabama. In December 2010, Governor Bob Riley called a Special Session of the Alabama Legislature, and the legislature passed a number of bills intended to strengthen the ethics laws. Hubbard was elected Speaker of the House during that Special Session, and he supported ethics reform.

In 1994, Hubbard started a successful business, Auburn Network, Inc., that held the athletic media rights for Auburn University. He sold the Auburn University media rights to International Sports Properties ("ISP") in 2003, but he was retained as president of the new company, Auburn ISP Network. ISP sold the business to a larger business, International Management Group ("IMG"), in 2010. IMG gave Hubbard a

termination notice early in 2011, but gave him a year's severance pay that would end in March 2012. Concerned about the upcoming loss of the $132,000 annual income from that job, Hubbard began searching for additional ways to supplement the salary he received as Speaker of the House. He was hired as a consultant by several companies.

In 2000, he became a 25% owner of Craftmaster Printers, a printing business in the Auburn area. Craftmaster began experiencing financial difficulties in 2005, but it continued to operate. In 2012, the company began having more serious financial problems and owed several hundred thousand dollars in back taxes. Hubbard and the other owners established a $600,000 line of credit, but the company continued to struggle and was at risk of defaulting on the line of credit. Hubbard was able to secure a financial turn-around plan from Will Brooke, a financial professional whom Hubbard had known for years. Part of the turn-around plan involved securing several investors for Craftmaster, and Hubbard was able to do so.

Hubbard continued in his position as Speaker of the House, which, according to several witnesses, is one of the most powerful positions in State government.

Additional facts will be discussed as they relate to the analysis of the issues.

Analysis

I.

Hubbard argues that "[t]he trial court should have dismissed the indictment because of prosecutorial misconduct, including especially conduct occurring before the grand jury." (Hubbard's brief at pp. 100-07.) Hubbard objects to the actions of Matt Hart, an attorney with the Special Prosecutions Division of the Attorney General's Office and one of the prosecutors in the case against him. Hubbard argues that Hart exercised overbearing power during the grand-jury proceedings and that he influenced the grand jury's decision to indict Hubbard by engaging in actions such as intimidating and threatening grand-jury witnesses. He also argues that, outside the presence of the grand jury, Hart displayed a bias against Hubbard and an intent to convict Hubbard even if he had not committed a crime.

In January 2013, then Attorney General Luther Strange directed Van Davis, a supernumerary district attorney, to oversee the State's interests in an investigation relating to

Hubbard. As part of that oversight, Davis requested that the Lee County Circuit Court empanel a special grand jury. On July 29, 2013, Judge Jacob Walker granted the State's motion and ordered that the grand jury be drawn on August 19, 2013. The special grand jury was empaneled on that date and met periodically in the months thereafter until, on October 17, 2014, the special grand jury returned the 23-count indictment against Hubbard.

Hubbard filed several motions to dismiss the indictment based on alleged prosecutorial misconduct. He filed supplements to the motions and included exhibits. Some of Hubbard's filings related to his contention that Hart's conduct in front of the grand jury unduly influenced the grand jury such that its decision was not truly that of the grand jurors who returned the indictment. Other motions and exhibits related to his allegation that some of Hart's conduct outside the grand jury's presence demonstrated his bias against Hubbard and his intent to influence public opinion and to ruin Hubbard politically.[1] The trial court held hearings

[1]In pretrial motions and in the hearings held on those motions, Hubbard raised additional grounds for dismissal of the indictments based on prosecutorial misconduct -- including allegations that Hart "leaked" grand-jury information to the

on Hubbard's motions to dismiss, and it denied those motions.

Hubbard and the State agree that the standard set forth in Bank of Nova Scotia v. United States, 487 U.S. 250 (1988), establishes the standard of proof necessary to support dismissal of an indictment when prosecutorial misconduct before a grand jury is alleged. The United States Supreme Court made it clear that dismissal of a grand-jury indictment based on prosecutorial misconduct requires more than allegations and speculation. The Court explained:

> "We conclude that the District Court had no authority to dismiss the indictment on the basis of prosecutorial misconduct absent a finding that petitioners were prejudiced by such misconduct. The prejudicial inquiry must focus on whether any violations had an effect on the grand jury's decision to indict. If violations did substantially influence this decision, or if there is grave doubt that the decision to indict was free from such substantial influence, the violations cannot be deemed harmless."

---

media and that the prosecution was selective and vindictive, but he fails to argue those grounds on appeal. Therefore, we deem those additional grounds to have been abandoned, and those claims will not be considered by this Court. E.g., Cooner v. State, [Ms. CR-16-1076, June 1, 2018] ___ So. 3d ___, ___ (Ala. Crim. App. 2018).

487 U.S. at 263. The Court also stated: "Errors of the kind alleged in these cases can be remedied adequately by means other than dismissal." Id.

Hubbard argues, incorrectly, that the standard of review here is de novo because, he says, the question is a legal one, not a factual one for the trial court's discretion. A trial court's denial of a motion to dismiss an indictment is reviewed under an abuse-of-discretion standard where, as here, the issue involves the credibility of witnesses and disputed issues of fact. E.g., Burt v. State, 149 So. 3d 1110, 1112 (Ala. Crim. App. 2013), and cases quoted therein. See also United States v. McIlwain, 772 F.3d 688, 693 (11th Cir. 2014)(denial of a motion to dismiss an indictment is reviewed for abuse of discretion).

In his argument on this issue, Hubbard puts forth selected quotations from the testimony of two witnesses he presented at the hearings on his motions to dismiss the indictment. Hubbard presented quotations from the testimony of Henry "Sonny" Reagan, a former employee of the Alabama Attorney General's Office who had worked with Hart. Reagan testified that Hart had targeted Hubbard and that Hart

intended to ruin Hubbard politically. After presenting the few quotations, Hubbard states: "The trial court, in its order denying the motions to dismiss, did not dispute the veracity of Reagan's testimony in this regard." (Hubbard's brief at p. 104.) In his discussion of this issue, Hubbard also included quotations from the testimony and affidavit of Professor Bennett Gershman, a professor at Pace University School of Law. Hubbard retained Gershman to determine whether the grand jury had been influenced by the prosecution's conduct. After summarizing portions of the testimony from Reagan and Gershman, Hubbard states: "The trial court, having these facts before it, nonetheless retreated to the view that to dismiss the indictment based on prosecutorial misconduct would be unprecedented." (Hubbard's brief at p. 107.) He concludes that "[t]he trial court's view essentially makes prosecutorial misconduct immune from judicial oversight." (Hubbard's brief at p. 107.) Hubbard also states:

> "The reasonable conclusion from the evidence in this case is that the prosecution -- most prominently, prosecutor Hart -- did make himself such an overbearing presence in the grand jury process, that the indictment can only be seen as his rather than the grand jury's. At the very least, there is grave doubt that the grand jury was truly independent of his overbearing pressure."

(Hubbard's brief at p. 103.) We disagree. Based on the record before us, we hold that the trial court did not abuse its discretion when it denied Hubbard's motions for dismissal of the indictment.

First, we note that, in arguing that the trial court erred in denying his motions to dismiss the indictment, Hubbard refers to only the testimony of Reagan and Gershman, although many more witnesses testified over the course of several days of hearings.[2] Second, we note that Hubbard has utterly failed to discuss or even acknowledge that the trial court issued an 18-page order addressing issues raised in pretrial hearings held on October 26-28, 2015, and March 3, 2016. A majority of the trial court's order addressed the claims Hubbard raised in the motions for dismissal and the testimony and documentary evidence presented at those

[2]Reagan's testimony comprises nearly 300 pages in the record. Reagan testified about numerous topics, including his perceptions of Hart's demeanor and threats Hart had allegedly made to him and others; conversations he had had and had complaints he filed with employees in the Alabama Attorney General's Office about Hart; and his resignation from the Attorney General's Office after he had been placed on administrative leave. In his brief to this Court, Hubbard offers only two paragraphs regarding Reagan's testimony, and those paragraphs consist primarily of 5 partial-sentence quotations from Reagan's testimony, as noted above. (Hubbard's brief at pp. 103-04.)

hearings, and it included the court's thorough legal analysis of the claims Hubbard raised in those motions. (C. 5107-24.) Hubbard refers to only two pages of the trial court's order -- one page as a reference to the legal standard the trial court said it would apply to the issue, and one page as a reference to the trial court's conclusion that Hubbard had failed to meet that standard. Third, Hubbard has failed to offer any reasoned discussion or analysis explaining why, based on relevant legal principles and all the evidence presented at the hearings, he believes the circuit court's analysis was legally incorrect.

Hubbard's brief discussion of Reagan's testimony focuses solely on Reagan's statements , in relevant part, that Hart's approach to grand juries was that he targeted a person and then investigated that person in search of a crime; that Hart had targeted Hubbard and hoped to make him plead guilty and resign from office; and that Hart intended to ruin Hubbard politically. Hubbard correctly states in his brief that the trial court did not dispute Reagan's testimony, but his point is irrelevant here. Nothing in Reagan's testimony, and certainly nothing in the portions of Reagan's testimony quoted

by Hubbard, was at all relevant to the standard set out in Nova Scotia that is necessary to support dismissal of an indictment based on prosecutorial misconduct. The Nova Scotia standard requires a finding that a defendant was prejudiced by a prosecutor's misconduct, so the relevant question is "whether any violations had an effect on the grand jury's decision to indict." Bank of Nova Scotia v. United States, 487 U.S. 250, 263 (1988). Unless the prosecutor's misconduct substantially influenced the grand jury's decision or there is "grave doubt that the decision to indict was free from such substantial influence," the indictment is not due to be dismissed. Id. The trial court and the prosecutors acknowledged this point repeatedly in a hearing August 17, 2015, on Hubbard's motion for an evidentiary hearing on the motion to dismiss alleging prosecutorial misconduct before the grand jury, and stated that testimony about matters occurring outside the grand jury's presence would be irrelevant to the Nova Scotia standard of proof.

Even if Hart had made statements indicating a bias against Hubbard and even if he had expressed an intent to end Hubbard's political career, that evidence does not establish

that Hart's statements had any influence, and certainly not "substantial" influence, on the grand jury's decision to indict, nor does it create any doubt, and certainly not "substantial" doubt that the grand jury's decision was affected by any such alleged influence. Therefore, Reagan's testimony provides no support for Hubbard's assertion that the trial court erred to reversal when it denied his motions to dismiss the indictment.

Hubbard also relies on testimony from Gershman, who said he had reviewed a variety of materials, including transcripts of some of the grand-jury testimony, some affidavits from grand-jury witnesses, and some transcripts of proceedings and hearings before the trial court, and that he had observed some of the proceedings in the trial court. Gershman concluded, based on his review, that the Lee County grand jury had been permeated with so many instances of misconduct by prosecutor Hart that there was no doubt that the misconduct influenced the grand jury's decision to indict Hubbard. Hubbard presents in his brief some of Gershman's testimony regarding what Gershman said were examples of Hart's misconduct -- such as disparaging and threatening witnesses, insinuating that

Hubbard's lawyers were unethical, putting his own character and opinions in front of the grand jury, and calling Hubbard to appear before the grand jury when he knew that Hubbard would invoke his right not to testify. The State correctly argues in its brief on appeal that much of what Gershman testified to were his legal conclusions based on his interpretation of a very small sample of the grand-jury proceedings, and that the trial court could draw its own legal conclusions. Furthermore, the circuit court had the opportunity to observe the witness during his testimony, and was in a far better position than is this Court to determine Gershman's credibility and the weight to accord his testimony. E.g., Carroll v. State, [Ms. CR-12-0599, Dec. 15, 2017] ___ So. 3d ___, ___ (Ala. Crim. App. 2017), and cases cited therein.

To the extent Hubbard would have this Court hold, based solely on the testimony of Reagan and Gershman, that the prosecution's alleged misconduct warranted a dismissal of the indictment against him, we find no basis for that argument. Furthermore, even though Hubbard failed to include in his brief even a mention of the additional testimony and

documentary evidence presented in relation to the motions to dismiss the trial court's order makes it clear that it reviewed that wealth of evidence, and that its denial of the motions to dismiss was based on all of that evidence. For example, in setting out Reagan's testimony at the evidentiary hearing, the trial court included the following: Reagan documented conversations he had with Hart regarding the grand jury and regarding what he perceived to be threats to him and to Hubbard; he complained multiple times to the Chief Deputy Attorney General and to the head of the Administrative Division of the Attorney General's Office; and he had retained legal counsel because of what he asserted was a hostile work environment Hart created. The trial court discussed the deposition testimony of Kevin Turner, who had been the Chief Deputy Attorney General at the time the grand jury proceedings were taking place; it discussed testimony and documentary evidence from Howard "Gene" Sisson, a former special agent with the Attorney General's Office, who had filed a complaint with the Alabama Ethics Commission regarding what Sisson believed to be ethics violations committed by Hart; and the testimony of James Sumner, who was the director of the Alabama

Ethics Commission with whom Sisson had filed the complaint. The trial court further stated that it had reviewed grand-jury transcripts Hubbard had filed that he alleged demonstrated the pattern of prosecutorial misconduct that affected the grand jury's decision. The court also stated:

> "[T]he Court ordered the State to produce the transcript pages of every Lee County Special Grand Jury witness being both sworn in and answering the State's questions regarding tone of the State's attorneys and if the witnesses ever felt threatened. The State filed the supplement with the Court on July 31, 2015. The Court reviewed these transcripts for indications of Prosecutorial Misconduct. Of 156 total transcripts produced, the only witness who did not answer in the negative when asked if he or she felt threatened gave neither a positive nor a negative response. The Court also reviewed the full transcripts of other Lee County Special Grand Jury witnesses, along with audio recordings of some witnesses' testimony. Furthermore, the Court allowed the Defendant to call witnesses to testify at the closed portion of the evidentiary hearings, held on October 28, 2015, regarding Mr. Hart's demeanor in front of the Lee Special Grand Jury. One of the witnesses told the Court that she did not feel threatened by Mr. Hart, only that she felt he questioned her competency to perform her job."

(C. 5112.)

Hubbard fails to mention this vast amount of evidence the trial court stated it reviewed and on what it based its denial of the motions to dismiss. Hubbard also failed to set out the trial court's conclusion as to the allegation of prosecutorial

misconduct: "Upon review of the briefs, argument, and testimony in anticipation of, during, and following the evidentiary hearings held from October 26, 2015, through October 28, 2015, the Court is of the opinion that Mr. Hart's alleged behavior does not rise to the level of substantially influencing the Lee County Special Grand Jury's decision to indict, as required by [Bank of Nova Scotia v. United States, 517 U.S. 456 (1996)]." (C. 5112.)

Hubbard has failed to demonstrate any error in the trial court's denial of his motions to dismiss. Rather, our review of the record and the trial court's thorough and well reasoned order leads us to the firm conclusion that the trial court did not abuse its discretion when it denied the motions. Dismissal of an indictment for prosecutorial misconduct requires proof of not only misconduct, but also of prejudice to the defendant, and proof of such prejudice requires consideration of whether any violations substantially affected the grand jury's decision to indict. The record before us does not establish a "grave doubt" that the grand jury's decision was free from the substantial influence of any alleged violations. Bank of Nova Scotia, 487 U.S. at 256–57.

Furthermore, the jurors at Hubbard's trial were not exposed to Hart's behavior before the grand jury to which Hubbard now objects, and it found Hubbard guilty of 12 counts. Even if "allegations of misconduct before the grand jury are true, 'the petit jury's verdict rendered harmless any conceivable error in the charging decision that might have flowed from the violation.' United States v. Mechanik, 475 U.S. 66, 67 (1986)(explaining that 'the petit jury's verdict of guilty beyond a reasonable doubt demonstrates a fortiori that there was probable cause to charge the defendants with the offenses for which they were convicted')." United States v. Flanders, 752 F.3d 1317, 1333 (11th Cir. 2014). Even if we had determined that the trial court abused its discretion when it denied Hubbard's motions to dismiss, and we do not so hold, any error would have been harmless.

For all of the foregoing reasons, Hubbard is entitled to no relief on this issue.

II.

Hubbard argues that he is entitled to a reversal of his convictions because, he says, the trial court learned during the trial about possible juror misconduct and it neither

informed counsel of the allegation nor investigated the alleged misconduct.

When Hubbard filed a posttrial motion for a judgment of acquittal and for a new trial, he also moved "for investigation by [the] Lee County Sheriff into juror misconduct." (C. 5540-46.) Along with that motion Hubbard filed an affidavit from one of the jurors who was on the jury that had decided his case. (C. 5547-50.) The affiant's name and the names of at least three other jurors were included in the affidavit, but the names are redacted from the copy of the affidavit included in the record. In the affidavit the juror alleged, among other things: that early in the trial, one of the jurors told the rest of the venire that, during individual voir dire, defense counsel asked the juror if he or she could put any personal thoughts aside and decide the case based on the evidence presented at trial and he or she answered affirmatively but the juror, talking to the veniremembers, then smiled and said "yeah, right" (C. 5549); that one of the jurors expressed the "opinion of Mike Hubbard's guilt very early in the trial" (C. 5549); that comments made by several members of the jury before trial started indicated that they

had made their minds up to convict Hubbard; that a juror "would mention who our witnesses were going to be for the day," and "even knew and advised us when Governor Bentley was going to testify" (C. 5548-49); that, after the State had presented its case, several jurors said that Hubbard should plead guilty. The affiant further alleged:

> "On May 31 [one week after trial began,[3]] I was so uncomfortable because of the commentary that I called an attorney I know during our lunch break. I advised the attorney that I had never served on jury duty before and that I was concerned [about] what was going on and the commentary that I was hearing. This attorney told me that it was not appropriate behavior and that I needed to report it to the court. When I returned from lunch that day, I ran into Trish Campbell [the court administrator]. I advised her of what I had witnessed up to that time. During the conversation with Mrs. Campbell, she wanted to know if I considered the comments 'deliberation' to which I responded 'if not, they are borderline.' Mrs. Campbell advised me she would discuss this with Judge Walker and go from there. I never heard anything else from her."

(C. 5548-49.)

At the hearing on Hubbard's motion for a new trial, the State argued that the matter of juror misconduct could be addressed in a hearing before the trial court and would not have to be investigated by the sheriff's department and that

[3]The jury rendered its verdict on June 10, 2016.

moreover, the juror's affidavit was inadmissible under Rule 606(b), Ala. R. Evid., generally prohibiting juror testimony impeaching a verdict. The trial court asked Hubbard whether he was prepared to present any testimony at the hearing. Hubbard said he was not ready to do so because, he said, he believed the matter should be investigated by an impartial law-enforcement agency and because, if testimony was ever to be heard, the trial judge might have to recuse himself if that testimony was related to any actions the trial court might have taken with regard to the juror's complaint.[4]

The trial court stated that, during the trial, it had been made aware of one of the affiant juror's complaints. Specifically, the trial judge explained:

> "Ms. Campbell came and reported that there was one juror complaining about comments making -- being made in the jury box. That's -- I told Ms. Campbell to have Mr. Bond [a bailiff] take that juror out and speak to that juror. And that was done. And -- and that's the only thing set forth in this affidavit that I have anything -- that was brought to this Court's attention."

---

[4]After noting that Hubbard had not filed a motion to recuse, the judge also told Hubbard to examine Jones v. State, 86 So. 3d 350 (Ala. 2011), which held that the judge in that case would not be required to recuse himself from a hearing on an allegation of juror misconduct because he would not have been a material witness in Jones's legal proceeding.

CR-16-0012

(R. 8235-36.)

The judge also stated that, because he thought Hubbard would present testimony at the hearing from the juror who submitted the affidavit, he had ensured that the court administrator and two bailiffs who were in the courtroom during Hubbard's trial were available for questioning. The judge stated that he thought "we would hear what they all had to say and then we would move on from there." (R. 8239.) The judge further stated that, because the juror-misconduct allegation was made in the motion for a new trial, he was trying to address the issue before the 60-day period for ruling on a motion for a new trial expired. See Rule 24.4, Ala. R. Crim. P.

Hubbard stated: "[W]e didn't make any preparation for that because we really -- the first we have heard from the Court about the Court being aware of the allegation is this morning." (R. 8239.) Hubbard said that the judge had not called the parties in during trial to tell them about the juror's complaint, and the judge said it was "the first opportunity" to tell Hubbard about it. (R. 8239.)

CR-16-0012

The State again argued that Hubbard's allegation of juror misconduct was one of premature deliberations rather than an allegation of extrinsic influence on the jury and, pursuant to Rule 606(b), Ala. R. Evid., there was nothing for the court to investigate. The State said that if Hubbard wanted an investigation, there was probably not sufficient time to complete the investigation before the expiration of the 60-day period for ruling on the motion for a new trial set out in Rule 24.4, Ala. R. Crim. P.[5]

Hubbard argued that the trial judge had had no discretion about whether to investigate the allegation of juror misconduct when it was reported to him. Hubbard further argued:

> "I think it was -- the Court -- it would be mandatory when the Court received information from -- from a juror for the Court to make some investigation of it. And then I feel like that the Court maybe committed error by not informing the attorneys on both sides that the Court had received that complaint. I think that that might have given us some reason to ask for a juror to be excused or something of that nature, which, like I say, we didn't -- I didn't learn that until this morning."

(R. 8253.)

---

[5]Hubbard said that he would not agree to an extension of the 60-day period. (R. 8260-61.)

The State told the judge that it was satisfied that the court's conduct during trial was appropriate. The State further told the court, "You handled things the way that you should, and we are satisfied with -- with what you have stated here in open court today." (R. 8254.) The court said that it was making the court administrator and two bailiffs available for questioning and that it had expected to hear from the juror who had submitted the affidavit. The court also said that it had intended, after that testimony had been taken, to rule on the motion for a new trial or to set the matter for another hearing at which time all the jurors could testify as to the allegations raised in the affidavit.

The court called Bobby Bond, one of the bailiffs from Hubbard's trial, to testify. Bond testified, in relevant part:

> "Ms. Campbell asked me to talk to a juror who was making comments under her breath, and so I called her aside and asked her, if she was making any comments under her breath, not to do it because you don't want to try to influence any of the other jurors.
>
> "That's ... the extent of it right there. And I told Ms. Campbell I would listen to see if I heard anything while they were in the ... jury box, but I never heard anything."

CR-16-0012

(R. 8263.)

Bond said that he spoke with the juror during the first couple of days of the trial, during the State's case. Bond testified that the juror denied saying anything. Bond testified that he then told Campbell that he had spoken with the juror; he did not report anything to the trial court. Bond also said that he had not heard any comment before he was asked to speak to the juror, and that no other complaints were brought to his attention.

Frank Vickery also served as a bailiff during Hubbard's trial, and the trial court called him to testify. Vickery said that he did not hear any juror make an improper statement during trial, and that he did not observe any juror engage in improper conduct during the trial.

The trial court called Patricia Campbell to the stand. Campbell testified that she was the Lee County court administrator and that she had assisted in supervising the jury in Hubbard's case. She stated she had read the juror's affidavit that had been submitted along with the Hubbard's motion for a new trial. Campbell testified that early in the

trial she learned of a juror's possible misconduct. Campbell testified:

> "One of the jurors came to me after lunch -- I was in the jury room. And she came forward to me and said that another juror was making remarks in the jury box and she found them to be distracting. I asked her what the comments were. She said things like, 'uh-huh (affirmative response), yes; now the truth is coming out.'"

(R. 8330.) She said that she asked that juror to identify the juror who had made the remarks, and the juror told Campbell that V.C. was the juror who had made the comments. Campbell testified that she went to the judge's office with the information.

Campbell testified:

> "[CAMPBELL]: And I let you [the trial court] know that we had -- I just told you exactly [what] I said and I informed you that we had a juror making comments in the jury box that was making another juror uncomfortable.
>
> "THE COURT: And then what -- what were your instructions?
>
> "[CAMPBELL]: My instructions then were to go to ask a bailiff to pull that juror to the -- the juror making the comments to the side and tell them that they probably didn't realize that they were talking out loud and not to do that any longer."

(R. 8330-31.)

Hubbard then argued to the trial court that Campbell's testimony supported his motion for a new trial. He stated:

> "Judge, just based on what she said, it was obvious that that juror with those initials had an informed opinion already, just on what she said was reported to her. 'Uh-huh (affirmative response), now the truth is coming out.' That -- I mean, that -- that in itself that -- that what Ms. Campbell just said what she heard. That tells you that juror had a formed opinion at that time early on in the trial. And if she had a formed opinion at that time, then there is no way Mike Hubbard got a fair trial."

(R. 8332-33.)

After hearing additional arguments from the parties, the trial court denied Hubbard's motion for an investigation by the sheriff's office of allegations of juror misconduct. The court said it would take the "rest of it" under advisement. (R. 8339.) The judge again said he thought the juror who submitted the affidavit would have testified at the hearing, and that a further hearing could be scheduled if needed. Hubbard did not file any additional pleadings or request another hearing. The motion for a new trial was denied by operation of law.[6]

---

[6]Although the motion had been denied by operation of law, the trial court entered a written order addressing the juror-misconduct allegations. The trial court stated that it deemed it necessary to do so because allegations of juror misconduct

CR-16-0012

Hubbard argues that reversal is due because, he says, the trial court failed to investigate the allegation of juror misconduct when it was reported to it by the court administrator, and because the trial court failed to notify counsel of the allegation or of the trial court's ex parte response to the allegation. The State acknowledges that, "[d]uring trial, one juror told court staff that a juror was commenting on evidence under her breath in the jury box. R. 8329." (State's brief at p. 111.) The State argues, however, that no reversible error occurred as a result of the trial judge's failure to inform counsel of the alleged misconduct when it was reported to him, or as a result of the judge's ex parte communication -- through his court staff -- with the

---

are often raised in other proceedings, including in postconviction petitions filed pursuant to Rule 32, Ala. R. Crim. P. The trial court no longer had jurisdiction after the motion for a new trial was denied by operation of law, so the court's order analyzing the issues in the motion is a nullity. Even though the trial court's order does not have a presumption of correctness because it was filed after the motion was denied by operation of law, the order, though tardy, provides an affirmative statement by the trial court as to its analysis of the issue, and its conclusion that Hubbard had failed to make a showing of prejudice. See Banks v. State, 845 So. 2d 9, 18-19 (Ala. Crim. App. 2002), quoted with approval in Porter v. State, 196 So. 3d 365, 366 n.1 (Ala. Crim. App. 2015)(an order filed after a motion for a new trial had been denied by operation of law "is enlightening as to what action the trial court might take if we were to remand").

juror who had allegedly commented on the evidence. We agree with the State.

Our analysis of this issue necessarily begins with the basic premise that, under the Sixth Amendment to the United States Constitution, every defendant in a criminal prosecution has a right to trial by an impartial jury. U.S. Const. amend. VI. "It is the trial court's duty to preserve the impartiality of the jury. Even the appearance of impropriety may infect public respect for the verdict. United States v. Hewitt, 517 F.2d 993 (3rd Cir. 1975)." Woods v. State, 367 So. 2d 982, 984 (Ala. 1978).

The United States Supreme Court also recognized that, although

> "it is virtually impossible to shield jurors from every contact of influence that might theoretically affect their vote[, d]ue process means a jury capable and willing to decide the case solely on the evidence before it, and a trial judge ever watchful to prevent prejudicial occurrences and to determine the effect of such occurrences when they happen."

Smith v. Phillips, 455 U.S. 209, 217 (1982).

Protection of a defendant's right to a fair trial necessarily requires a trial court to address possible improprieties related to the jury when they arise during the

proceedings. The circumstances underlying any alleged misconduct dictate the type and scope of investigation the trial court chooses to conduct, and the court's ruling on any motion made by a defendant as a result of that investigation are addressed to the trial court's sound discretion.

The Alabama Supreme Court held:

> "The test for determining whether juror misconduct is prejudicial to the defendant and, thus, warrants a new trial is whether the misconduct might have unlawfully influenced the verdict rendered. Ex parte Troha, 462 So. 2d 953, 954 (Ala. 1984); Roan [v. State, 143 So. 454, 460 (Ala. 1932)]; Leith [v. State, 90 So. 687, 690 (Ala. 1921)]. Once the trial court investigates the misconduct and finds, based on competent evidence, the alleged prejudice to be lacking, this Court will not reverse. See Bascom v. State, 344 So. 2d 218, 222 (Ala. Crim. App. 1977)."

Reed v. State, 547 So. 2d 596, 597 (Ala. 1989).

Campbell testified that a juror reported that another juror was making "distracting" remarks in the jury box, such as, "uh-huh (affirmative response), yes; now the truth is coming out." (R. 8330.) The comments were ambiguous. While it is clear that the reportedly distracting remarks were made early in the trial, during the State's case, it is unknown whether the remarks were made during the direct examination of

a State's witness, or during Hubbard's cross-examination of a State's witness.

"The more speculative or unsubstantiated the allegation of misconduct, the less the burden to investigate." United States v. Caldwell, 776 F.2d 989, 998 (11th Cir. 1985). It appears that, because V.C. reportedly made the comments under her breath, and, perhaps because of the ambiguity of the remarks, the trial court deemed the matter de minimis, and determined that having a bailiff ask V.C. to stop making comments under her breath adequately addressed the complaint. Although the burden to investigate in this case might have appeared slight to the trial court, we believe the court should have at a minimum questioned the juror who made the complaint. By merely instructing his court administrator to tell a bailiff to speak to the juror who had been accused of muttering under her breath in the jury box, the court made only a weak attempt to investigate the matter to determine whether Hubbard's rights were prejudiced by the comments.

The trial court compounded the problem by failing to inform the parties of the alleged misconduct as soon as the court administrator reported the matter to the court. Had the

trial court promptly informed the parties of the juror's complaint about V.C.'s comments, the court could have immediately questioned under oath one juror or both about the allegations, and, with the court's permission, the parties also could have questioned them. The court and the parties would then have timely gained necessary information about whether V.C. was biased and whether she had made any prejudicial remarks in the jury box. Furthermore, if the inquiry led to a finding that V.C. had made biased comments in the jury box, the trial court should have promptly investigated whether other jurors had heard the comments and whether the comments had a prejudicial effect on the remaining jurors. Based on that information, Hubbard could have timely raised any objections he might have had with regard to V.C. remaining on the jury, or any other matters related to the alleged juror misconduct, up to and including moving for a mistrial based on jury contamination.

Hubbard argues that this failure to notify the parties that a juror had made comments in the jury box and to conduct a more robust investigation requires reversal of his convictions. We disagree.

> "'In cases involving juror misconduct, a trial court generally will not be held to have abused its discretion "where the trial court investigates the circumstances under which the remark was made, its substance, and determines that the rights of the appellant were not prejudiced by the remark."'
>
> "Holland v. State, 588 So. 2d 543, 546 (Ala. Crim. App. 1991). 'There is no per se rule requiring an inquiry in every instance of alleged [juror] misconduct.' United States v. Hernandez, 921 F.2d 1569, 1577 (11th Cir. 1991). '[A] trial judge "has broad flexibility in such matters, especially when the alleged prejudice results from statements by the jurors themselves, and not from media publicity or other outside influences."' United States v. Peterson, 385 F.3d 127, 134 (2d Cir. 2004), quoting in turn United States v. Thai, 29 F.3d 785, 803 (2d Cir. 1994).
>
> > "'"The trial court's decision as to how to proceed in response to allegations of juror misconduct or bias will not be reversed absent an abuse of discretion." United States v. Youts, 229 F.3d 1312, 1320 (10th Cir. 2000). "[I]t is within the trial court's discretion to determine what constitutes an 'adequate inquiry' into juror misconduct." State v. Lamy, 158 N.H. 511, 523, 969 A.2d 451, 462 (2009).'
> >
> > "Shaw v. State, 207 So. 3d 79 (Ala. Crim. App. 2014)."

Luong v. State, 199 So. 3d 173, 186 (Ala. Crim. App. 2015).

See also Floyd v. State, [Ms. CR-13-0623, July 7, 2017] ___ So. 3d ___, ___ (Ala. Crim. App. 2017).

Hubbard presented allegations of juror misconduct in his motion for a new trial, and the trial court held a hearing on the motion. Hubbard was afforded the opportunity to prove his claims of juror misconduct, and he failed to do so.

> "'[A]t a hearing on a motion for a new trial, the defendant has the burden of proving the allegations of his motion to the satisfaction of the trial court.' Miles v. State, 624 So. 2d 700, 703 (Ala. Crim. App. 1993), citing Anderson v. State, 46 Ala. App. 546, 547, 245 So. 2d 832, 833 (1971), and Jones v. State, 31 Ala. App. 504, 507, 19 So. 2d 81, 84 (1944). Thus, a defendant seeking a new trial on the basis of juror misconduct has the initial burden to prove that a juror or jurors did in fact commit the alleged misconduct."

Dawson v. State, 710 So. 2d 472, 475 (Ala. 1997).

As explained in the initial portion of our discussion of this issue, Hubbard presented no evidence at the hearing on the motion for a new trial. The trial judge stated repeatedly that he had been under the impression that Hubbard would present testimony from the juror who had filed the affidavit and who had complained to the court administrator about juror V.C. making comments under her breath. Hubbard put forth three reasons for not presenting testimony from the juror who had lodged the complaint, or from any other juror. First, he stated that the trial court had entered an order forbidding

counsel from talking to the jurors. Second, he stated that the matter should be "properly investigated" by an impartial law-enforcement agency so, he said, "we can see what we need to do before we call witnesses blindly to the stand." (R. 8241.) Third, Hubbard stated that he believed that the trial judge might have to recuse himself because, he said, "part of it has to do with whether you investigated it or did anything on it ...." (R. 8232.) Hubbard was wrong on all counts.

First, as the trial court reminded Hubbard at the hearing, on July 15, 2016, the trial court had entered an order in response to Hubbard's posttrial motion requesting investigation by the Lee County sheriff into juror misconduct, and stated "if the attorneys intend to interview any juror or alternate juror they should first file a request with the Court." (C. 5563.) Second, when the trial court asked Hubbard whether he could provide any cases where a law-enforcement agency had investigated claims of juror misconduct, Hubbard said that he could not. Instead, the trial court stated that relevant caselaw demonstrated that, in cases involving claims of juror misconduct, the jurors were

brought forward to testify in open court.[7] Third, Alabama law does not support Hubbard's claim that the trial judge might have had to recuse himself on the basis Hubbard had argued: "[P]art of it has to do with whether you investigated it or did anything on it as that lady -- as that -- as included," so he was not "set to have a hearing." (R. 8232.) The trial court stated that it was not going to issue a ruling on recusal because Hubbard had not filed a motion to recuse. (R. 8237.) The court then correctly stated that Jones v. State, 86 So. 3d 350 (Ala. 2011), presented similar circumstances and it held that the trial judge in that case did not have to recuse himself from a hearing on a juror-misconduct issue.[8]

After disposing of each of Hubbard's invalid reasons for failing to call any juror to testify at the hearing, the court then called its own witnesses to testify. At the conclusion of the hearing on Hubbard's motion for a new trial, the judge again said that he thought Hubbard would have at least

---

[7]Hubbard has abandoned this issue on appeal. E.g., Clark v. State, 196 So. 3d 285, 299 (Ala. Crim. App. 2015)(holding that arguments raised in the trial court but not argued on appeal are deemed abandoned).

[8]Hubbard has abandoned this issue on appeal. E.g., Clark v. State, 196 So. 3d at 299.

presented testimony from the juror who had filed the affidavit, but that, "if need be, we will come back for a further hearing," and that it needed to be within the 60-day period set out in Rule 24.4 for ruling on a motion for a new trial. Hubbard did not avail himself of that opportunity.

Thus, we are left with no testimony from any juror about what V.C. allegedly said, about any bias V.C. might have had, or about whether any other jurors heard the alleged remarks and were influenced by them. Even though the trial court's actions prevented Hubbard from presenting any testimony from jurors during the trial, the court provided him that very opportunity during the hearing on the motion for a new trial, but Hubbard declined to avail himself of that opportunity. Furthermore, even though Hubbard did not call any witnesses at the hearing on the motion for a new trial -- for reasons that had no basis in fact or law -- the trial court said it would be willing to hold a second hearing on the matter, thus presenting Hubbard with another opportunity to present juror testimony and to prove his allegation that he was entitled to a new trial. Once again, Hubbard failed to avail himself of the opportunity. Out of an abundance of caution, the better

practice would have been for the circuit court to advise counsel of the alleged misconduct and to investigate the matter immediately, rather than postpone any inquiry until the trial was over. Nonetheless, we hold that Hubbard failed to prove that he suffered any prejudice and, more importantly, that any juror misconduct occurred at his trial.

Furthermore, "[t]he Eleventh Circuit Court of Appeals has held that if the jury reaches a split verdict, this fact demonstrates that the jury carefully weighed the evidence and reached a reasoned conclusion free of undue influence and did not decide the case before the close of the evidence. See, e.g., United States v. Dominquez, 226 F.3d 1235, 1248 (11th Cir. 2000)." United States v. Siegelman, 467 F. Supp. 2d 1253, 1280 (M.D. Ala. 2006). The jury here acquitted Hubbard on 11 counts, and convicted him on 12 counts, indicating that its verdicts were not based on undue influence or bias.

No error occurred as a result of the denial of the motion for a new trial, and Hubbard is not entitled to relief on this claim of error.

III.

Hubbard argues that error occurred with regard to the presentation of testimony from James Sumner, the former executive director of the Alabama Ethics Commission, about the intent and meaning of the Alabama ethics laws. He also argues that the explanation of legal principles relevant to a case is the province of the trial court, and that a witness -- even an expert one -- is prohibited from testifying about matters involving questions of law.

Hubbard argues: "It was improper for the State to present 'expert' testimony from Sumner about what the ethics laws mean, what they provide, what they prohibit, and what their 'intent' or 'purpose' was." (Hubbard's brief at p. 89.) He alleges, further:

> "It is also especially impermissible and prejudicial when a witness is allowed to testify (as Sumner did) that a law was 'intended' or 'meant' to be read broadly or in any other way, or that the law had a given 'purpose.'"

(Hubbard's brief at p. 92.) Hubbard stated that "Sumner was wrong as a matter of law on points such as the scope of the statutory term 'principal,' and the scope of the 'compensation' exclusion from the definition of 'thing of value.'" (Hubbard's brief at p. 93.) His allegations in his

brief continued: "But the prejudicial effect of Sumner's testimony was not limited to those matters. It was present, as well, in his lengthy testimony on his non-statutory concept of the 'mantle of office,' or aura.'" (Hubbard's brief at p. 93.)

The rules regarding the admission of evidence are well established. Rule 104, Ala. R. Evid., provides that preliminary questions of relevance and admissibility of evidence are to be determined by the trial court, and caselaw has consistently applied that rule. Rule 702(a), Ala. R. Evid., states: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise." The admission or exclusion of evidence is a matter for the sound discretion of the trial court. E.g., Towles v. State, 168 So. 3d 133, 140 (Ala. 2014); Hinkle v. State, 67 So. 3d 161, 164 (Ala. Crim. App. 2010). "The admissibility of all types of expert testimony is 'subject to the discretion of the trial court.' Ex parte

Williams, 594 So. 2d 1225, 1227 (Ala. 1992). '[T]he trial court's rulings on the admissibility of such evidence will not be disturbed on appeal absent a clear abuse of that discretion.' Id." Bowden v. State, 610 So. 2d 1256, 1258 (Ala. Crim. App. 1992)(quoted in Revis v. State, 101 So. 3d 247, 282 (Ala. Crim. App. 2011)).

The rules regarding the preservation of issues for review on appeal are also well established. To preserve an issue for appellate review, the defendant must raise it in the trial court by way of a timely objection setting out specific grounds in support of the objection. E.g., Alonso v. State, 228 So. 3d 1093, 1099 (Ala. Crim. App. 2016). "The statement of specific grounds of objection waives all other grounds not specified"; therefore, grounds not raised in the trial court but raised for the first time on appeal are deemed waived. E.g., Kidd v. State, 105 So. 3d 1261, 1264 (Ala. Crim. App. 2012). Finally, to preserve an issue for review on appeal, the defendant must obtain an adverse ruling from the trial court; otherwise there is nothing to review. E.g., McWhorter v. State, 142 So. 3d 1195, 1251 (Ala. Crim. App. 2011).

We have examined the assertions Hubbard makes in the argument section of his brief but failed to support with record citations, and we have considered the record citations he included in the statement of facts when setting out Sumner's testimony. For many of the citations to Sumner's testimony Hubbard includes in the statement of facts, Hubbard failed to object to that testimony; as to other record citations to Sumner's testimony where Hubbard did object, he objected on grounds other than those he raises on appeal; and as to a few citations to Sumner's testimony, Hubbard objected and the trial court sustained the objections or told the prosecutor to rephrase the questions. As to the few parts of Sumner's testimony to which Hubbard did object and his objections were overruled, and as to which, to the best of our understanding of his brief, he has attempted to argue on appeal should have been sustained, we would not hold that he was entitled to relief.

In Fitch v. State, 851 So. 2d 103 (Ala. Crim. App. 2001), this Court held that no error occurred when Hugh Raymond Evans III, the assistant director and general counsel of the Alabama Ethics Commission, who testified as an expert on the ethics

law, testified as to an ultimate issue to be decided by the jury. Fitch was on trial for violating § 36-25-5(a), Ala. Code 1975, and at the time Fitch was alleged to have committed the crime, the statute read: "No public official or employee shall use an official position or office to obtain direct personal financial gain for himself, or his family, or any business with which he or a member of his family is associated unless such use and gain are specifically authorized by law." 851 So. 2d at 116-17. At trial Evans had answered a series of questions that addressed the ultimate issue whether the actions Fitch had taken were authorized by the ethics law. Fitch objected to the testimony on the ground that it violated Rule 704, Ala. R. Evid., and the trial court overruled the objection. This Court held that the trial court had committed no error in doing so. We held:

> "The above exchange did not constitute reversible error under Rule 704, Ala. R. Evid., because Rule 702, Ala. R. Evid., provides an exception for its admission. Rule 702, Ala. R. Evid., provides:
>
> > "'If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may

> testify thereto in the form of an opinion or otherwise.'
>
> "This Court has said:
>
> > "'Rule 704, Ala. R. Evid., provides that "[t]estimony in the form of an opinion or inference otherwise admissible is to be excluded if it embraces an ultimate issue to be decided by the trier of fact." However, in the case of expert testimony, enforcement of this rule has been lax. C. Gamble, Gamble's Alabama Rules of Evidence § 704 (1995). We have noted previously in Travis v. State, 776 So. 2d 819 at 849 (Ala. Crim. App. 1997), that expert testimony as to the ultimate issue should be allowed when it would aid or assist the trier of fact, and the fact that "'"a question propounded to an expert witness will elicit an opinion from him in practical affirmation or disaffirmation of a material issue in a case will not suffice to render the question improper"'" (citations omitted); see also Rule 702, Ala. R. Evid. (stating that expert testimony should be allowed when it will aid or assist the trier of fact).'
>
> "Henderson v. State, 715 So. 2d 863, 864-65 (Ala. Crim. App. 1997).
>
> "'We recognize that through interviews, case studies, and research a person may acquire superior knowledge concerning characteristics of an offense.' Simmons v. State, 797 So. 2d 1134, 1155 (Ala. Crim. App. 2000). Evans's testimony -- that as counsel for the Ethics Commission he authored advisory opinions that applied the ethics law to fact situations -- was sufficient to establish that he had a specialized knowledge of the ethics law. Here, an ultimate issue to be decided by the jury

> was whether Fitch's alleged direct personal financial gain was specifically authorized by law. 'It seems to us that expert testimony on this subject -- which the defense was free to contradict -- was reasonably likely to assist the jury in understanding and in assessing the evidence, in that the matter at issue was highly material, and beyond the realm of "acquired" knowledge normally possessed by lay jurors.' Simmons v. State, 797 So. 2d at 1156-57 (homicide investigator considered an expert in crime scene analysis and victimology based on his studies and experiences in these fields). Evans's familiarity with the ethics law would have assisted the fact-finder in determining whether Fitch's conduct was authorized by law."

Fitch v. State, 851 So. 2d at 117-18 (emphasis added).

James Sumner testified that he was an attorney and that he had served as director of the Alabama Ethics Commission from 1997 until 2014. During that time he also was a deputy attorney general. As part of his job as director of the Ethics Commission, he and others at the Commission had presented more than 1,000 seminars on the ethics law, and he had personally participated in presenting approximately 600 of those seminars. Sumner and his staff had issued formal advisory opinions and informal advice and opinions in response to requests from public officials or public employees covered by the ethics law who sought to determine what certain provisions of the law permitted or prohibited. Informal

advice was based on the ethics law and previously rendered opinions of the Ethics Commission, he said. Sumner also said that, over the years in the job, he carefully monitored legislation related to the ethics law, and he provided input about the law to the Alabama Legislature at times. Therefore, like the witness in Fitch, Sumner's testimony "was sufficient to establish that he had a specialized knowledge of the ethics law," and his "familiarity with the ethics law would have assisted the fact-finder in determining whether [Hubbard's] conduct was authorized by law." Id. at 118. Therefore, Hubbard's testimony was not prohibited on the grounds raised. Furthermore, the general areas of Sumner's testimony to which Hubbard vaguely refers in the argument section of his brief, such as legislative intent, the scope of the definition of a "thing of value," and the meaning and use of the term, "mantle of office," were each addressed in a series of questions by the State. In each series of questions, Sumner provided testimony that was cumulative to any single answer Sumner gave that Hubbard objected to and received an adverse ruling on at trial. Any error in allowing inadmissible testimony is harmless when prior or subsequent testimony, admitted without

objection, is cumulative to the inadmissible testimony. E.g., Lynch v. State, 209 So. 3d 1131, 1138-39 (Ala. Crim. App. 2016).

Finally, the parties and the trial court repeatedly told the jury that the trial court would instruct them on the legal principles relevant to the charges against Hubbard. (R. 4147, 4277, 7947, 7956, 7962, 7976, 7980, 7991, 7995.) The trial court here told the jury repeatedly that it was responsible for providing instructions on the law, and we presume that jurors follow the trial court's instructions. E.g., Calhoun v. State, 932 So. 2d 923, 965 (Ala. Crim. App. 2005).

For all the foregoing reasons, we hold that Hubbard has no right to a reversal as to this issue.

IV.

Hubbard challenges his conviction on Count 5, which charged that he violated § 36-25-5(b), Ala. Code 1975, by voting on legislation in which he knew or should have known that he had a conflict of interest. This charge was related to Hubbard's voting on Senate Bill 143 -- the General Fund Budget bill, knowing that it contained a provision very favorable to the American Pharmacy Cooperative, Inc. ("APCI"),

while he was under contract with APCI and was receiving $5,000 monthly in compensation from it. Hubbard argues that "[t]he huge General Fund appropriations bill included one provision that was sought by APCI," and that he voted on the bill even after his "Chief of Staff and others suggested that there might be a problem in [his] voting on the General Fund bill because he had a consulting contract with APCI," because "when [he] voted, he knew and intended that the language would never become law." (Hubbard's brief at pp. 45-46.) He further argues that he did not have a conflict of interest as that term is defined in the ethics law. The State presented the following evidence.[9]

Tim Hamrick, the president and chief executive officer of APCI, testified that APCI was the corporate office fo community-based, community-owned pharmacies located in 24 states, including Alabama. He explained APCI's goal:

> "[O]ur mission is to help them compete in the industry, help them compete with the larger chains and provide them services that's going to help them be competitive in their marketplace, to affect

[9]The facts presented here are relevant to Hubbard's arguments on Count 6, which we discuss in Part VI.A.1 of this opinion.

> legislation, to do advertising and promotional materials for them to use for their stores."

(R. 5310.)

Hamrick said that Hubbard had been a supporter of APCI for many years before APCI hired him as a consultant. APCI contracted with Hubbard in June 2012 based on the recommendation of Ferrell Patrick, APCI's lobbyist. Hubbard's primary focus, Hamrick said, was to represent APCI's interests in states in which the company was expanding. Hubbard was hired to work in states other than Alabama, and APCI paid Hubbard $5,000 per month, for a total of $95,000 for the duration of the consulting agreement. The State asked Hamrick: "[W]hat sort of things did you think Mr. Hubbard could do for you in other states?" (R. 5276.) Hamrick testified: "Being Speaker of the House in Alabama, he served -- and I don't recall the organization -- but President of a Speaker Association and knew the Speakers and Legislators from other states." (R. 5276.) Hamrick thought that the contacts Hubbard had developed with other legislators as the Speaker of the House could be useful contacts in the other states in which APCI conducted business.

Hamrick testified that, several months after APCI hired Hubbard, during the 2013 legislative session, APCI had an interest in legislation involving a pharmacy-benefit manager, or "PBM." Hamrick said that in meetings with Medicaid officials in Alabama, it appeared that Medicaid was leaning toward bringing in a PBM to manage Medicaid' pharmacy program. Hamrick said that APCI had discussed the matter with Medicaid officials for months and tried to get them to understand that a PBM would not be in the State's best interests. A PBM would have been bad for APCI members because they were small-town independent pharmacists. Hamrick testified that, if Medicaid planned to adopt a PBM program, APCI wanted to be part of it. To that end, APCI crafted statutory language that required any PBM to represent 30% of the retail pharmacies in the state; only APCI would satisfy that requirement. That proposed statutory language was given to Representative Greg Wren. The language was included in a budget bill in the House of Representatives, and the bill passed in the House, with Hubbard's vote.

Hubbard's former chief of staff, Josh Blades, provided additional testimony about Hubbard's involvement in the APCI

budget language. Blades testified that, during the 2013 legislative session, the general-fund budget "was in trouble. It needed money." (R. 4637.) He said that Medicaid was the largest portion of the general-fund budget. The director of the Department of Medicaid, Dr. Don Williamson, was in favor of using a commercial PBM, a group that would manage pharmacy services for the Department, and doing so would save a fairly substantial sum of money. Blades explained further:

> "So the PBM was, as I said, [managing] the program. And in managing that program, they would likely cut down on the utilization and maybe even cut fees for pharmacy providers. That was a problem for local pharmacies. So we had lots of small pharmacies around the state who have a major problem with instituting a PBM. That's when the local pharmacies came up with this idea of, hey, we'll do our own PBM. And they came to us during that time and said, we can do this ourselves. You don't have to have -- you don't have to hire someone from outside the state to come in here and manage the program. We can do it ourselves. We won't be able to save you as much money, but we will be able to save you a substantial sum of money. Sounded like a great idea to us."

(R. 4638-39.)

Blades testified that Ferrell Patrick was one of APCI's lobbyists. Patrick asked Blades for a meeting with Hubbard, Representative Greg Wren, Representative Steve Clouse, and John Ross, who was also a lobbyist for APCI. Wren was on the

General Fund committee, Blades said. Patrick presented the idea to the others at the meeting, and everyone thought it seemed like a great idea, Blades said. It was agreed that Norris Green, the director of the Legislative Fiscal Office, would examine the details of the APCI proposal to determine whether it would save the State some money. A second meeting was held. Hubbard was present, as was Norris, and most of the participants from the first meeting. After Norris reported that the plan would save money, everyone agreed to move forward with the plan. Blades testified that his job at that point was to execute the plan. Clouse brought some language for Blades to consider, and Blades took it to Hubbard's chief legal counsel, Jason Isbell. Isbell thought the language was acceptable, so Blades asked him to have it inserted into the general-fund budget bill. The language "would have essentially allowed APCI to be the pharmacy benefit manager in the State." (R. 4647.) APCI would be a contractor that would serve as the PBM for the Medicaid Department, if Medicaid decided to use a PBM.

Hamrick sent a letter to Hubbard after the language was added to the bill. He read a portion of the letter into the

record: "Mr. Speaker: By adding the necessary language to the 2014 General Fund Budget, you placed a great deal of faith and -- faith and trust in us. For that, our industry and the people we serve are forever grateful. I pledge to you that we will not let you down." (R. 5292.)[10] The letter to Hubbard began with the following:

> "On behalf of the nearly ten thousand individuals who work in Alabama's pharmacy industry and their patients, I wanted to sincerely thank you for championing our fight to prevent a large, out-of-state pharmacy benefit manager from taking over the pharmacy program within Medicaid. Local pharmacies are the places our families and our seniors go to get the trusted advice, reassurance and vital prescriptions needed to treat our most serious and private maladies. Most customers view their independent pharmacist as a neighbor and counselor rather than as just a person with whom they do business. Because of your leadership, these individuals can now rest assured that these valuable relationships remain in tact [sic]."

(C. 945.)

Hamrick identified a letter he sent to APCI members after the PBM language was included in the House bill. A portion of the letter to APCI members stated:

> "At the end of the day, however, accomplishing a feat such as this took certain members of the Legislator [sic] championing our cause. Without

[10]Hamrick testified that the same letter was sent to Representative Wren and to two state senators.

> question, our industry has no greater champion than Speaker Mike Hubbard throughout this process. His commitment to preserving Alabama jobs and standing up for independent pharmacies across the state was what ultimately made the difference for us."

(R. 5287-88.)

The vote on the General Fund Budget bill, SB-143, took place on April 23, 2013. Before the bill was called for a vote, John Ross met privately with Blades and told him that Patrick had just revealed to him that Hubbard had a contract with APCI. Ross and Blades went to see Hubbard, who was on the floor of the legislature, which was then in session. They asked Hubbard to return to his office, which he did, and they asked him if he had a contract with APCI. Hubbard admitted that he did, but said that it was only for work outside the State. Blades testified: "At that point, we told him that we thought it was a problem, and that we did not think he should move forward with the language in the budget because it looked bad." (R. 4651.) He said that Hubbard told him he had gotten some sort of approval from the Ethics Commission on the APCI contract and again said that the contract with APCI was for work outside of Alabama. Blades testified that he told Hubbard that he should not vote on the bill with the added

language, and Hubbard told him to have the language taken out of the General Fund Budget bill. Blades spoke with several members of the legislature about having the language removed, but there was not much time to do so because the bill was being considered by the House of Representatives at that time. Blaine Galliher of the Governor's office called Blades to ask what he was doing, and the Governor was on speakerphone during that conversation. Blades told them that Hubbard had changed his mind about the PBM provision in the budget bill and that he now wanted to have the existing proposal replaced with the one providing for a commercial PBM, the plan Dr. Williamson supported. The Governor supported the commercial PBM plan, too. Blades was unable to have the APCI language removed, so the new plan was to allow the budget to pass in the House as it was, and to have the language removed in the Senate or in a conference committee consisting of members of both the Senate and the House.

Blades told Hubbard that the language could not be removed before the vote was taken, and he recommended that Hubbard abstain from voting or not enter a vote at all. Hubbard told him that red flags would be raised if he did not

vote on his own budget, and he entered a vote in favor of the budget. Blades testified that, after the vote, he went to see Phillip Bryan, who was a friend and also the chief of staff for Del Marsh, the president pro tem of the Senate. Blades testified that Bryan was one of the few people in Montgomery that he trusted enough to talk to about such things, and he further testified that he was upset because he had not known about Hubbard's contract with APCI, and because he had unknowingly played a role in getting the APCI language added to the budget bill. Not only did Blades think that it looked bad that Hubbard had voted on the bill with the APCI language in it, but he had a further concern: "I was afraid that there could be legal implications for what happened. I was afraid that Mike [Hubbard] may end up in some sort of legal trouble after all of this transpired." (R. 4661.) The APCI language was eventually removed from the budget bill. Blades said that Hubbard told Dr. Williamson that he had changed his mind and that he was supporting Dr. Williamson's plan for the commercial PBM.

Blades said that it was his understanding that Ross then canceled Hubbard's contract with APCI. Hubbard told Blades

that, after the vote, he spoke with James Sumner at the Ethics Commission about matter and that everything was okay. Blades asked Hubbard if he had any other contracts, and Hubbard told him that he had a contract with an education-software company, Edgenuity, but he did not mention any other contracts to Blades.

Jason Isbell testified that he had been Hubbard's chief legal counsel. During the Spring 2013 legislative session, he worked on legislation that pertained to pharmacy benefit managers. He said that Representative Greg Wren and Ferrell Patrick came to his office and asked him for assistance in drafting a piece of pharmacy-related legislation that would be added to the Medicaid section of the budget bill. Isbell testified that he transcribed onto his computer the language Wren and Patrick had already written and that "they wanted to add in to a committee substitute of the general fund budget." (R. 4760.) Isbell told them that he wanted to be sure that Hubbard approved of the language and of their plan to put it in the version of the General Fund Budget bill the committee was substituting for the original budget bill. Isbell said that he took the draft language to Hubbard, who was on the

House floor, and told him he had drafted it at Wren's request and wanted to send it to the Legislative Fiscal Office, but did not want to do so without Hubbard's knowing about it. Isbell said that he had highlighted some language and that Hubbard scanned the document and indicated to Isbell that he could send it to the Legislative Fiscal Office, where it would be analyzed to determine how it would affect the State fiscally. Isbell said that he got the impression from Hubbard's statement to him "that he was aware that this language had at least been discussed, and that maybe Mr. Wren was going to try to get it drafted." (R. 4767.) Hubbard seemed to know about the actual language that would be included in the Medicaid portion of the General Fund Budget bill. Isbell said that when he later spoke with Norris Green at the Legislative Fiscal Office about the pharmacy language, he again got the impression that there had been a discussion earlier that day about the language Wren had asked him to draft.

Isbell testified that, when Wren and Patrick brought the language to him, Hubbard had not told him that he was a consultant for APCI and had not even mentioned APCI to him and

that he had never heard of APCI. Isbell said that he had no knowledge of the the effect the language if it was included in the Medicaid portion of the budget bill.

Kenny Sanders testified that he was vice president of professional affairs at APCI until May 2013, approximately one year after Hubbard was hired. He said that he and APCI's lobbyist, Ferrell Patrick, had had many discussions about trying to increase APCI membership in states outside of Alabama, and Patrick told him that he believed Hubbard could help APCI "with legislators and to help APCI's name get known in other states." (R. 5330-31.) He and Patrick discussed the idea that Hubbard could help with legislators in other states because Hubbard was the Speaker of the House, and because he was well connected in the Republican Party and was well known by legislative leaders in other states. The State continued to explore APCI's reasons for hiring Hubbard:

> "Q. [Prosecutor:] And as Speaker of the House and as a state legislator, did you think there was value in the fact that Mike Hubbard belonged to legislative conferences and groups like that that brought in lots of legislators in various regions and all over the country?
>
> "A. [Sanders:] Yes."

(R. 5332.)

Sanders identified an e-mail he hadsent to the APCI board of directors on August 1, 2012, that stated:

> "Following our announcement and conversation regarding Mike Hubbard joining APCI as a consultant to help us in states outside of Alabama yesterday, the timing of this press release could not have been better. Note that the member states are all APCI states."

(R. 5333.) Sanders said that the article he had placed in the body of the e-mail was about Hubbard having been selected as the chairman of the Southern Legislative Conference. Sanders testified that the timing of the press release could not have been better because part of the reason APCI hired Hubbard "was to use these kind of contacts to help APCI." (R. 5335.) Sanders said that, even though Hubbard was hired in June 2012, he was not able to meet with Hubbard until August 2012 to talk about what kind of work Hubbard would do for APCI in other states. Sanders said that, because he was under the impression that some of the legislative conferences took place in the fall, he felt that APCI had missed a window to get Hubbard going to some of the conferences.

Sanders testified he was not aware of any work Hubbard did for APCI during the time Sanders was employed at APCI.

CR-16-0012

Hubbard argues, among other things, that, as a matter of law, he had no conflict of interest. We discern his argument to be a challenge to the sufficiency of the State's evidence. Hubbard preserved this allegation of error by raising it in a motion for a judgment of acquittal at the conclusion of the State's case, and at the conclusion of all of the evidence.

> "The trial court's denial of a motion for a judgment of acquittal must be reviewed by determining whether there existed legal evidence before the jury, at the time the motion was made, from which the jury by fair inference could have found the appellant guilty. Thomas v. State, 363 So. 2d 1020 (Ala. Crim. App. 1978). In applying this standard, the appellate court will determine only if legal evidence was presented from which the jury could have found the defendant guilty beyond a reasonable doubt."

Breckenridge v. State, 628 So. 2d 1012, 1018 (Ala. Crim. App. 1993)(quoted in Graham v. State, 210 So. 3d 1148, 1153-54 (Ala. Crim. App. 2016)).

In order to prove a violation of § 36-25-5(b), Ala. Code 1975, the State had to prove: that Hubbard was a public official; that he voted for SB-143, the General Fund Budget bill containing the language favorable to APCI; that he knew or should have known he had a conflict of interest; and that

he acted intentionally. Resolution of the issue turns on the statutory definitions of "conflict of interest."

Section 36-25-1, Ala. Code 1975, states: "Whenever used in this chapter, the following words and terms shall have the following meanings," and subsection (8) defines "conflict of interest," in relevant part, as:

> "A conflict of interest involves any action, inaction, or decision by a public official or public employee in the discharge of his or her official duties which would materially affect his or her financial interest or those of his or her family members or any business with which the person is associated in a manner different from the manner it affects the other members of the class to which he or she belongs."

Section 36-25-1(2) also defines "business with which the person is associated," referred to in subsection (8), above, as "[a]ny business of which the person or member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business."

Hubbard was convicted of violating § 36-25-5(b), voting on legislation when he knew or should have known he had a conflict, and that section of the statute has a definition of "conflict of interest" within it. Section 36-25-5(f) states:

> "A conflict of interest shall exist when a member of a legislative body, public official, or public employee has a substantial financial interest by reason of ownership of, control of, or the exercise of power over any interest greater than five percent of the value of any corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation; or who is an officer or director for any such corporation, company, association, or firm, partnership, proprietorship, or any other business entity of any kind or character which is uniquely affected by proposed or pending legislation."

Hubbard argued in his motions for a judgment of acquittal that he had no conflict of interest under either definition. He argues here that the definition in § 36-25-5(f) was the only relevant one because it was included within the statute under which he was charged, and because it was a more specific definition than the one in the definitions section at the beginning of the statute. The State argues that both definitions may apply in a given case, but that the definition in § 36-25-1(8) applies here because the State's theory was that Hubbard was guilty because he "voted on legislation that would materially affect APCI, a business with which he was associated as an employee." (State's brief at pp. 62-

63)(emphasis added). The trial court charged the jury on the definitions in both sections.

We need not decide which definition of conflict of interest the legislature intended to apply when a defendant is charged with violating § 36-25-5(b), because the State failed to present any evidence that would support a finding by the jury that Hubbard had a conflict of interest under either definition.

Under the State's theory that Hubbard had a conflict, applying the definition § 36-25-1(8), the State would have had to provide evidence indicating that Hubbard's vote would have materially affected the financial interest of a "business with which [he was] associated," as that phrase is defined in the statute. The fact that Hubbard had a contract with APCI was not enough to establish that Hubbard was "associated with" APCI under the terms of the statute because § 36-25-1(2) requires proof that Hubbard's vote was on behalf of "[a]ny business of which the person or member of his or her family is an officer, owner, partner, board of director member, employee, or holder of more than five percent of the fair market value of the business." The State argues that Hubbard

was an employee of APCI, but it put forth no evidence indicating that he was.

The ethics statute does not define "employee." However, § 36-25-1(26) defines "public employee" as:

> "[A]ny person employed at the state, county, or municipal level of government or their instrumentalities ... who is paid in whole or in part from state, county, or municipal funds. For purposes of this chapter, a public employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income."

(Emphasis added.)

> "It is this Court's responsibility to give effect to the legislative intent whenever that intent is manifested. State v. Union Tank Car Co., 281 Ala. 246, 248, 201 So. 2d 402, 403 (1967). When interpreting a statute, this Court must read the statute as a whole because statutory language depends on context; we will presume that the Legislature knew the meaning of the words it used when it enacted the statute. Ex parte Jackson, 614 So. 2d 405, 406-07 (Ala. 1993). Additionally, when a term is not defined in a statute, the commonly accepted definition of the term should be applied. Republic Steel Corp. v. Horn, 268 Ala. 279, 281, 105 So. 2d 446, 447 (1958). Furthermore, we must give the words in a statute their plain, ordinary, and commonly understood meaning, and where plain language is used we must interpret it to mean exactly what it says. Ex parte Shelby County Health Care Auth., 850 So.2d 332 (Ala. 2002)."

CR-16-0012

Bean Dredging, L.L.C. v. Alabama Dep't of Revenue, 855 So. 2d 513, 517 (Ala. 2003).

We are required to consider the statute as a whole, so consideration of two related definitions in § 36-25-1 is especially relevant. The legislature's definition of "public employee" provides evidence of how the legislature would define "employee" in the context of § 36-25-1(2), which defines the phrase, "business with which the person is associated." Simply replacing "public employee" with "employee" yields the following definition, in relevant part:

> "For purposes of this chapter, [an] employee does not include a person employed on a part-time basis whose employment is limited to providing professional services other than lobbying, the compensation for which constitutes less than 50 percent of the part-time employee's income."

(Emphasis added.)

Hubbard was employed by APCI on a part-time, as-needed basis; he rendered professional services other than lobbying; and the State established that his compensation from APCI constituted less than 50% of his income. We have no difficulty determining that Hubbard was not an employee of APCI's and that, as a result, the State failed to present any

evidence indicating that he had a conflict of interest as that phrase is defined in § 36-25-1(8).

We find further support for our conclusion from other sources. Black's Law Dictionary defines "employee" as "[s]omeone who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance." Black's Law Dictionary 639 (10th ed. 2014). The State presented no evidence that APCI controlled the details of Hubbard's work performance. To the contrary, APCI's contract with Hubbard included only general terms that made it clear that Hubbard was to be available at reasonable times on an as-needed basis to advise and consult with APCI and its members. The legislature did not define "consultant," and Black's Law Dictionary does not include a definition of the term, but Merriam-Webster's Collegiate Dictionary defines "consultant" as "one who gives professional advice or services." Merriam-Webster's Collegiate Dictionary 765 (11th ed. 2003). The legislature's definition of public employee excludes a person "providing professional services," thus lending further support to our finding that Hubbard was not an

employee of APCI's under § 36-25-1(2). There being no evidence of conflict of interest as the term is defined in § 36-25-1(8), the State's sole argument on appeal fails. The State did not establish a prima facie case of a violation of § 36-25-5(b), i.e., that Hubbard voted on legislation when he knew, or should have known, that he had a conflict of interest.

The alternative definition of "conflict," under § 36-25-5(f), would require either that Hubbard had ownership or control over any interest greater than 5% of the value of the APCI -- and the State has never maintained that Hubbard did -- or that Hubbard was an officer or director of the organization -- and the State never maintained that Hubbard was.

Therefore, under either statute, the State failed to present any legal evidence from which the jury by fair inference could have found that Hubbard had a conflict of interest when he voted on the General Fund Budget bill. The trial court erred when it denied Hubbard's motions for acquittal as to Count 5. The conviction on Count 5 is reversed and a judgment rendered for Hubbard on that count.

V.

Hubbard next argues that his convictions on Counts 11-14 should be reversed.

Hubbard was convicted in Count 11 of violating § 36-25-5(a), Ala. Code 1975. Count 11 alleged that Hubbard used his office for personal gain in the form of money from Robert Abrams d/b/a CV Holdings, LLC, for himself or a business with which he was associated, Auburn Network, when the use and gain were not otherwise specifically authorized by law.

Hubbard was convicted in Count 12 of violating § 36-25-1.1, Ala. Code 1975. Count 12 alleged that, while he was a public official, Hubbard d/b/a Auburn Network intentionally received money from Robert Abrams d/b/a CV Holdings, LLC, to represent Abrams before the Alabama Department of Commerce.

Hubbard was convicted in Count 13 of violating § 36-25-1.1, Ala. Code 1975. Count 13 alleged that, while he was a public official, Hubbard d/b/a Auburn Network intentionally received money from Robert Abrams d/b/a CV Holdings, LLC, to represent Abrams before the Governor of the State of Alabama.

CR-16-0012

Hubbard was convicted in Count 14 of violating § 36-25-5(c), Ala. Code 1975. Count 14 charged that, while he was a public official, Hubbard intentionally used or caused to be used a State computer, a State e-mail account, or his time and/or labor and the time and/or labor of his chief of staff, Josh Blades, for his private benefit; specifically, that Hubbard d/b/a Auburn Network received payment from Robert Abrams d/b/a CV Holdings, LLC, and that the payment materially affected his financial interest in a way not otherwise provided by law.

The arguments Hubbard puts forth in this section of his brief are an attempt to challenge the weight of the evidence. This Court has said:

> "The weight of the evidence is clearly a different matter from the sufficiency of the evidence. The sufficiency of the evidence concerns the question of whether, 'viewing the evidence in the light most favorable to the prosecution, [a] rational fact finder could have found the defendant guilty beyond a reasonable doubt.' Tibbs v. Florida, 457 U.S. 31, 37 (1982). Accord, Prantl v. State, 462 So.2d 781, 784 (Ala. Cr. App. 1984)....
>
> "In contrast, '[t]he "weight of the evidence" refers to "a determination [by] the trier of fact that a greater amount of credible evidence supports one side of an issue or cause than the other."' Tibbs v. Florida, 457 U.S. at 37-38 (emphasis added). We have repeatedly held that it is not the

> province of this court to reweigh the evidence presented at trial. E.g., Franklin v. State, 405 So. 2d 963, 964 (Ala. Crim. App. 1981); Crumpton v. State, 402 So. 2d 1081, 1085 (Ala. Crim. App. 1981); Nobis v. State, 401 So. 2d 191, 198 (Ala. Crim. App. 1981). '"[T]he credibility of witnesses and the weight or probative force of testimony is for the jury to judge and determine."' Harris v. State, 513 So. 2d 79, 81 (Ala. Crim. App. 1987) (quoting Byrd v. State, 136 So. 431 (Ala. App. 1931)."

Johnson v. State, 555 So. 2d 818, 820 (Ala. Crim. App. 1989), on return to remand, 576 So. 2d 1279 (Ala. Crim. App. 1990), rev'd on other grounds, 576 So.2d 1281 (Ala. 1991), quoted with approval in Frazier v. State, [Ms. CR-15-1484, Sept. 8, 2017] ___ So. 3d ___, ___ (Ala. Crim. App. 2017).

> "'Once a prima facie case has been submitted to the jury, this Court will not upset the jury's verdict except in extreme situations in which it is clear from the record that the evidence against the accused was so lacking as to make the verdict wrong and unjust. Deutcsh v. State, 610 So. 2d 1212, 1234-35 (Ala. Crim. App. 1992). This Court will not substitute itself for the jury in determining the weight and probative force of the evidence. Benton v. State, 536 So. 2d 162, 165 (Ala. Crim. App. 1988).'
>
> "May v. State, 710 So. 2d 1362, 1372 (Ala. Crim. App. 1997).
>
> "'Furthermore, on appeal, there is a presumption in favor of the correctness of the jury verdict. Saffold v. State, 494 So. 2d 164 (Ala. Crim. App. 1986).

> Although that presumption of correctness is strong, it may be overcome in a limited category of cases where the verdict is found to be palpably wrong or contrary to the great weight of the evidence. Bell v. State, 461 So. 2d 855, 865 (Ala. Crim. App. 1984).'
>
> "Henderson v. State, 584 So. 2d 841, 851 (Ala. Crim. App. 1988)."

Thompson v. State, 97 So. 3d 800, 810 (Ala. Crim. App. 2011).

The State established a prima facie case as to each count, and the charges were properly submitted to the jury for its consideration. The evidence establishing a prima facie case for each of the four counts is discussed separately, below.

A. Count 11

Hubbard was convicted in Count 11 for violating § 36-25-5(a), Ala. Code 1975, using his office for personal gain in the form of money from Robert Abrams d/b/a CV Holdings, LLC, for himself or a business with which he was associated, Auburn Network, when the use and gain were not otherwise specifically authorized by law. Section 36-25-5(a), Ala. Code 1975, provides:

> "No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or

> herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains, exerts control over, or otherwise converts to personal use the object constituting such personal gain."

The State presented the following evidence in support of that charge.

Robert Abrams testified that he was the president and chief operating officer of SiO2 Medical Products, and that the company's headquarters were located in Lee County, Alabama, which is within Hubbard's legislative district. Abrams testified that he had been a majority owner of CV Holdings, another business located in Lee County, but that he had sold that company in 2015. Abrams testified that Capitol Cups had been part of CV Holdings, and that he was the majority owner of Capitol Cups. As a small portion of its business, Capitol Cups made a sippy cup for children -- an insulated cup with a tight cover that would keep liquids cold for several hours. Abrams testified that he had used the sippy cup at the office for his coffee, and one of his employees asked why he was doing so. He and others explained to her that it kept the

coffee hot for a longer period of time, so she asked why they did not sell the sippy cup for use by people other than children. Abrams said, "So we did and it worked out very well." (R. 6129.) So, in addition to sippy cups, Capitol Cups also began manufacturing coffee cups.

Abrams testified that the distributor for Capitol Cups had a marketing agreement with Major League Baseball and the National Football League and made cups with individual team logos for each baseball and football team. Abrams testified that he was interested in making similar agreements with colleges. The company had worked unsuccessfully for approximately four years to secure those agreements.

Abrams said that he had known Hubbard since 1999 or 2000, when Hubbard was first elected as a member of the Alabama Legislature. Abrams said he was aware that Hubbard had had a sports radio show in Auburn, and he asked Hubbard if he knew anyone in college administrations who might help Capitol Cups get approval to put the emblem for each Southeastern Conference team on their cups, for which the company would pay a licensing fee. Hubbard attempted to do so, but was not successful. He told Abrams that he had not been able to find

anyone who could help Capitol Cups obtain a licensing agreement, but that he would be willing to reach out to some of his former contacts to do so.

Abrams testified that he approached Hubbard about a possible consulting agreement to work in an area related to cup sales. The State asked Abrams if he was "at all concerned that Mr. Hubbard was a member of the legislature when [he was] talking about doing this," and Abrams said that he asked Hubbard about that specifically. (R. 6122.) Hubbard told him about or showed him a letter from the Alabama Ethics Commission that stated that Hubbard was permitted to work for third parties, but Abrams told him he did not need to see it. Abrams said he checked with the company's attorneys to see if he could hire Hubbard, a sitting legislator, "and they said in all probability, yes," but he acknowledged that the company had no other consultants who were sitting legislators. (R. 6122-23.)

Abrams spoke with Tina Belfance, the general manager of Capitol Cups, and asked her to determine whether she thought Hubbard could be helpful as a paid consultant for the company.

Although Abrams consulted her, she did not meet Hubbard until after he and Abrams had signed the consulting agreement.

Hubbard and Capitol Cups entered into a retainer agreement for consulting services in September 2012. The terms of the agreement provided that Hubbard would advise Capitol Cups as to the sales and marketing of its products in exchange for $10,000 per month. Between October 2012 and July 2014, Hubbard received $220,000 pursuant to the contract.

Tina Belfance testified that she was the general manager of Capitol Cups. She testified that, before January 2015, CV Holdings was the parent company for several other companies, including Capitol Cups. She said that someone working for Capitol Cups could have received a check from CV Holdings because, she said, "[w]e were all under that umbrella." (R. 6148.) Robert Abrams had been her boss at Capitol Cups until the ownership of CV Holdings changed. Abrams hired Hubbard as a consultant for Capitol Cups, but he first discussed the hiring with her to see whether she thought hiring Hubbard would be beneficial to the company. Hubbard had been employed by Capitol Cups for approximately six weeks before she met with him, and he had been paid during that time.

Belfance testified that Capitol Cups was working with the Playtex Company and used some proprietary and patented technology to create and engineer the first insulated cup for children -- a sippy cup. Capitol Cups then used that technology to make a coffee cup and began selling the cups to quick-service restaurants like Dunkin' Donuts, and to many chains of convenience stores. The original sippy cups were sold to Walmart discount stores.

Belfance testified that her understanding was that Hubbard had contacts with some of the markets where the company hoped to sell its products, including Chick-fil-A fast-food restaurants, Waffle House breakfast restaurants, and Publix grocery stores. She said that Hubbard told her he knew an executive in marketing at Chick-fil-A, Steve Robinson, and that Hubbard set up a meeting with a manager who worked under Robinson. She met Hubbard at Chick-fil-A headquarters in Atlanta for a meeting, and she was able to give a presentation about Capitol Cups. She later had discussions with an employee in the company's purchasing department. She never met with or spoke to Robinson, and Capitol Cups did not sell any product to Chick-fil-A.

Josh Blades, Hubbard's former chief of staff, testified that he and Hubbard were going on a trip on State business and were going to fly out of the Atlanta airport. Steven Tidwell, Hubbard's executive security agent, drove them to Atlanta in his State-assigned vehicle. Before the flight, Hubbard went to Chick-fil-A headquarters in Atlanta. Hubbard told Blades that he was going to a meeting that involved a company in his district. Blades thought the company might have been called Capitol Cups and that the company wanted to sell its cups to Chick-fil-A. A woman joined Hubbard at Chick-fil-A headquarters, he said, and the two of them went in for a meeting with Chick-fil-A people. Blades and Tidwell waited there for a while, he said, then left to have breakfast.

Blades also testified that he knew that Abrams had contributed to the Republican Party or to Hubbard's campaign.

Belfance said that Hubbard gave her the name of contact at Waffle House. She had telephone conversations with that person and sent sample packages of the product, but Waffle House did not buy any cups as a result of that contact. Belfance identified a series of e-mails she exchanged with Hubbard regarding some of his contacts with people at Waffle

House and Chick-fil-A. In one e-mail, Hubbard wrote that he was attending a legislative conference in Scotland, and Georgia Senator Don Balfour, an executive with Waffle House, was also there. Hubbard wrote that he had spoken with the senator "about the dead end we hit with them." (C. 6950.) Hubbard said that the senator had pledged to break through that dead end and that Hubbard was to contact the senator after the conference. Waffle House still did not purchase any cups from Capitol Cups, Belfance said. By contrast, Belfance testified about a consultant who worked for Capitol Cups solely in relation to the company's account with Walmart. She said that the consultant developed the account with Walmart in 2009, and that Capitol Cups sent its first shipment to Walmart in 2010.

Belfance testified that Hubbard provided her with the name of the Publix employee who was responsible for purchasing infant-care products, Sherry Goodelle. Belfance testified that, because Hubbard gave her the contact's name, she was able to contact the specific buyer for infant-care products and that she would not otherwise have been able to do that. Belfance e-mailed Goodelle and requested to meet with her in

person so that she could present the sippy cup and explain its benefits, but Goodelle did not agree to an in-person meeting. Belfance identified a series of e-mails that had been forwarded to her that were related to the attempts to establish an account with Publix. Hubbard had written to Clayton Hollis and Michael Mitchell at Publix, neither of whom Belfance knew. In the initial e-mail, Hubbard asked for their assistance with Capitol Cups, which he identified as a company in his legislative district. He said that it would be a huge favor if they could arrange a meeting with an executive at the corporate headquarters for Publix so that the executive could see and learn about the product, and hear about the marketing goals Capitol Cups had set. The e-mail closed with Hubbard's identification as the Alabama Speaker of the House. Hubbard did not give the men any idea that he worked for Capitol Cups. Belfance also identified e-mails between Mitchell and Goodelle, in which Mitchell identified Hubbard as the Alabama Speaker of the House, but did not mention that he was a consultant for Capitol Cups. Capitol Cups did not sell any cups to Publix.

The foregoing evidence established a prima facie case for Count 11, which charged Hubbard with violating § 36-25-5(a), Ala. Code 1975, for using his office for personal gain in the form of money from Robert Abrams d/b/a CV Holdings, LLC, for himself or a business with which he was associated, Auburn Network, when the use and gain were not otherwise specifically authorized by law. Viewing the evidence in the light most favorable to the State, as we must, we conclude that the jury could have found that Hubbard intentionally used his office as Speaker of the House to make money as a consultant to Capitol Cups. The testimony tended to establish that, while engaged in activities associated with his public office, he deliberately furthered his interests as a consultant, and that he did so intentionally. The State presented evidence indicating that Hubbard had actively pursued courses of action related to the promotion of Capital Cups, that he did so in the context of his activities as a public official or using his official title as a means of encouraging business contacts to meet with Belfance about purchasing from Capital Cups. Furthermore, while he was promoting Capital Cups, he did not identify himself to the business contacts as a consultant to

Capital Cups, but he clearly communicated to Belfance his efforts to promote business for Capitol Cups when he engaged in those activities.

Hubbard argues that he "did not use his office to obtain the consulting contract [with Capitol Cups;] that is clear from the testimony, and any contrary assertion by the prosecution would be mere speculation." (Hubbard's brief at p. 86.) This statement is conclusory and without consideration, discussion, or so much as a mention of much of the evidence the State presented in its case. Hubbard testified at trial that his work on behalf of Capitol Cups involved making introductions and opening doors so the company could speak with decision-makers in different companies and submit products to them. Determination of Hubbard's intent, both in securing the contract and in his efforts on behalf of the business during his employment as a consultant, was a matter solely for the jury to determine. E.g., White v. State, 227 So. 3d 541, 546 (Ala. Crim. App. 2016)(noting that intent is a state of mind or mental purpose and is an issue for the jury to resolve).

> "'"Intent, ... being a state or condition of the mind, is rarely, if ever, susceptible of direct or

> positive proof, and must usually be inferred from the facts testified to by witnesses and the circumstances as developed by the evidence."' Seaton v. State, 645 So. 2d 341, 343 (Ala. Crim. App. 1994), quoting McCord v. State, 501 So. 2d 520, 528–29 (Ala. Crim. App. 1986))."

Stoves v. State, 238 So. 3d 681, 691 (Ala. Crim. App. 2017).

Because the State presented evidence from which the jury could have determined that Hubbard used his office for personal gain -- income from Abrams's company -- when the use and gain were not otherwise specifically authorized by law, the trial court did not err in submitting the charge to the jury for its determination. There is a strong presumption that a jury's verdict is correct. That presumption may be overcome when the verdict is palpably wrong or contrary to the great weight of the evidence. Based on our review of the record, we conclude that the verdict does not present one of those extreme situations in which it is clear from the record that the evidence against the accused was so lacking as to make the verdict wrong and unjust. Therefore, Hubbard is not entitled to relief on Count 11.

B. Counts 12 and 13

Hubbard was convicted of two counts of violating § 36-25-1.1, Ala. Code 1975. That statute provides, in relevant

part: "No member of the Legislature, for a fee, reward, or other compensation, in addition to that received in his or her official capacity, shall represent any person, firm, corporation, or other business entity before an executive department or agency." Count 12 alleged that, while he was a public official, Hubbard d/b/a Auburn Network intentionally received money from Robert Abrams d/b/a CV Holdings, LLC, to represent Abrams before the Alabama Department of Commerce. Count 13 alleged that, while he was a public official, Hubbard d/b/a Auburn Network intentionally received money from Robert Abrams d/b/a CV Holdings, LLC, to represent Abrams before the Governor of the State of Alabama.

To establish a prima facie case, the State had to prove the following: Hubbard was a member of the legislature; Hubbard received a fee, reward, or other compensation -- checks from Abrams; Hubbard represented Abrams before an executive department, the Office of Governor of Alabama (Count 13), and the Alabama Department of Commerce, which is also part of the executive branch (Count 12);[11] Hubbard received

[11]"There is hereby created the Department of Commerce within the office of the Governor and directly under his or her supervision and control." § 41-29-1, Ala. Code 1975.

this compensation in addition to that received in his official capacity; and Hubbard acted intentionally.

Robert Abrams testified that he had been a majority owner of CV Holdings. Capitol Cups was part of CV Holdings when Abrams and Hubbard signed the Capitol Cups consulting contract. Abrams testified that he also was the president and CEO of SiO2 Medical Products, which was located within Hubbard's legislative district. Abrams described SiO2 as "a scientific-based company" that had "invented a new material" that had many different uses, but that it first was being used to develop products for the biotechnology industry. (R. 6094-95.) Abrams further explained that the company was making delivery systems for drugs and that the manufacturing site for the product had "to be absolutely of the highest degree of sterility" and could not have any bacteria at all. (R. 6096.) He said that this created problems in training and maintaining a work force and, he said, many people in the industry had more people in training and quality-control positions than they did in production positions.

Abrams testified that he that had learned from reading a newspaper article that a major corporation was moving to

Mobile, Alabama, and that it had been awarded $51 million for a training center to train its workers. He later learned that those funds had come "out of a special Governor's fund that he controlled for major projects like that." (R. 6100.) Abrams said: "When I saw how many workers we [at Si02] were going to have eventually and what our pay scale was, it was greater than" the other company's, so he began to explore whether he could get similar funding for Si02. (R. 6099-100.) Abrams contacted Hubbard about what he had heard and asked him if it was possible to set up a meeting with Governor Robert Bentley to discuss getting funds for a training facility for SiO2. Hubbard was able to assist him, and Abrams identified a series of e-mails related to the matter. On December 3, 2013, Abrams e-mailed Hubbard and asked if he had an update on visitors to the training center. Hubbard replied that he had spoken with Governor Bentley and with Alabama Secretary of Commerce Jack Canfield and told Abrams that Canfield and a project manager wanted to meet with Abrams during the week of December 16, 2013. Hubbard also told him that the Governor was anxious to meet with him. By this time, Hubbard had received $150,000 from Abrams pursuant to the consulting contract for Capitol

Cups. On December 4, 2013, Hubbard's assistant set up a December 18, 2013, meeting between Abrams and Canfield in Auburn so Canfield could see the SiO2 facility and discuss the company's training needs. The assistant told Abrams in an e-mail that Hubbard was busy that day and would not be attending the meeting. Canfield went to the facility in Auburn. Hubbard also set up a meeting between Abrams and Governor Bentley in Montgomery in 2013 with regard to the SiO2 facility and funding for the company's training needs.

The foregoing evidence established a prima facie case for Counts 12 and 13, which charged Hubbard with violating § 36-25-1.1, Ala. Code 1975. Viewing the evidence in the light most favorable to the State, as we must, the jury could reasonably have concluded that Hubbard was representing and acting on behalf of Abrams and Si02 before the Governor and Secretary Canfield in order to continue to receive the compensation he received from Abrams, which was in addition to that he received in his official capacity. Hubbard asks rhetorically, "Were the consulting payments to Auburn Network, pursuant to its contract with Capitol Cups, 'really' secretly a payment in exchange for arranging a meeting or meetings for

Si02?" (Hubbard's brief at p. 82.) "No," Hubbard answers, "There is no evidence that they were." (Id.) Hubbard testified that his work on behalf of Si02 was no different from the work he did on behalf of any constituent in his district. He argues on appeal that he was convicted of Counts 12 and 13 for acting on behalf of Si02 but that he had a contract with Capitol Cups, so his "compensation was indisputably paid for other reasons." (Hubbard's brief at p. 84.) His statements are conclusory and are supported by no citation to the testimony or other evidence at trial. Furthermore, the credibility of the witnesses and weight of the testimony was a matter solely for the jury to decide, as was Hubbard's intent, because intent usually must be inferred from witness testimony and other circumstances as developed by the evidence. E.g., White v. State, 227 So. 3d 541, 546 (Ala. Crim. App. 2016)(intent is a state of mind or mental purpose, and is an issue for the jury to resolve).

The purpose for which Hubbard was offered the consulting position and was paid $10,000 per month was a jury question because it involved an evaluation of all of the evidence presented on the issue. Whether Hubbard represented Abrams

and Si02 before the Governor and the Secretary of Commerce as their legislator, or for compensation in the form of consulting fees he had received and hoped to continue to receive from Abrams in addition to the compensation he received in his official capacity, was a question properly left for the jury to decide. There is a strong presumption that a jury's verdict is correct. That presumption may be overcome when the verdict is palpably wrong or contrary to the great weight of the evidence. Based on the record before us, we conclude that the verdict does not present one of those extreme situations in which it is clear from the record that the evidence against the accused was so lacking as to make the verdict wrong and unjust.

C. Count 14

Hubbard was convicted in Count 14 for violating § 36-25-5(c), Ala. Code 1975, which provides, in relevant part:

> "No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by

> law or as provided pursuant to a lawful employment agreement regulated by agency policy."

Count 14 charged that, while he was a public official, Hubbard intentionally used or caused to be used a State computer, a State e-mail account, or time and/or labor -- his own and that of his chief of staff, Josh Blades -- for his private benefit, specifically, that Hubbard received payment from Robert Abrams and that the payment materially affected his financial interest in a way not otherwise provided by law. To prove a prima facie case, the State had to establish that Hubbard was a public official; that he used or caused to be used a State computer, a State e-mail account, his labor and/or time, and the labor and/or time of another State employee, Chief of Staff Josh Blades, for his private benefit in the form of money that materially affected his financial interest; and that he did so intentionally.

Robert Abrams testified that Si02, one of his companies, held a substantial number of patents. He explained that, when the United States Patent Office approves a patent, the owner is notified by mail that, after a designated fee is paid, the patent will be officially printed and issued. However, Abrams said, until such time as the official patent is sent from the

patent office to the Government Printing Office and printed with the official number, the patent cannot be used by the patent owner. An official printed patent usually is delivered within a day or two of the payment of the fee stated in the letter allowing the patent, he said. Abrams testified that, in the summer of 2013, SiO2 had received notice that one of its significant patents had been granted, but the official patent certificate had not been printed in a timely manner. The situation was frustrating, Abrams said, because at that time SiO2 was involved in major patent litigation involving a violation of one of SiO2's major patents. The legal proceedings had been protracted, and SiO2 had spent more than $12 million in legal fees. The new patent would have settled some of the issues in that ongoing case, he said, but delivery of the official printed patent had been delayed by approximately a month.

Abrams testified that he called Hubbard about the matter and asked if Hubbard knew anyone in Washington who might have oversight of the Government Printing Office. Hubbard told him that he did not know anyone on a committee that had oversight of the Government Printing Office but that he would try to get

the patent from the printing office as quickly as possible. On July 21, 2013, Abrams e-mailed Hubbard the patent-application number and the date it had been approved. Hubbard was able to resolve the matter, and he explained to Abrams that a close personal friend worked in the patent office in Washington, and the friend had been very helpful. On August 22, 2013, Abrams e-mailed Hubbard to let him know that he had received notice that the patent was official and added his thanks. Hubbard e-mailed his reply and stated, in part: "I hope my calls and pushing helped speed it up a bit." (C. 1001.)

Josh Blades, Hubbard's former chief of staff, said that he knew that Abrams had businesses in Auburn, and that one of his companies was CV Holdings. He said that he believed Abrams had some interest in Capitol Cups, too. Blades knew that Abrams had contributed to the Republican Party or to Hubbard's campaign. Hubbard never told him that he had a contract for money with Abrams, Capital Cups, or CV Holdings, or that he had anything at all to do with them.

At some point in 2013, Blades said, Hubbard contacted him and asked for help on behalf of Abrams, who was having trouble

getting a patent through the United States Patent Office. Hubbard had apparently noticed that a Mississippi Congressman was on the Patent Oversight Committee and, because Blades had gone to school in Mississippi, Hubbard asked him if he had any connections with that Congressman's office because he wanted to help get the patent through the process. At that time, Blades believed that Hubbard was asking him to do something within the scope of his employment as Hubbard's chief of staff on behalf of a business owner in Hubbard's district. Blades testified about the telephone calls he made to two chiefs of staff in Mississippi, and said that he was given phone numbers for an employee at the United States Patent Office. Blades contacted the employee about Abrams's patent issue, and the employee agreed to try to get the issue resolved. The patent was not issued as quickly as the two of them had hoped, and Hubbard contacted Blades periodically to check on the status of patent. Hubbard told him that it was very important to him that they get it done. "Mr. Hubbard told me he had 100,000 reasons to get this done." (R. 4673.) Blades said Hubbard's comment made him uncomfortable because he immediately thought that Hubbard meant money in some form. The State presented

evidence indicating that, by this time, Hubbard had received $100,000 from Abrams pursuant to his consulting contract. The next time Hubbard called Blades and asked about the patent, Blades told him he felt that he had done all he could from the staff level to push the project along and that Hubbard might need to handle it from there. Blades identified a series of e-mails, on State e-mail accounts, between him and Hubbard regarding the patent issue. In one of the e-mails, Blades provided Hubbard with the telephone number of the patent-office employee he had been working with on Abrams's patent. Blades read aloud during his testimony part of what Hubbard wrote in his last e-mail in this series: "He ended up being very helpful. I'm going to send him some cuff links. Maybe if you or I invent something, he could help us through the process." (R. 4679.) Blades identified records from his personal cell-phone account and Hubbard's, and both contained the telephone number for the patent-office employee.

The foregoing evidence was sufficient to make out a prima facie case as to Count 14. The jury could reasonably have concluded that Hubbard violated § 36-25-5(c) by intentionally using State computers, State e-mail accounts, his time and

labor, and Blades's time and labor in an attempt to speed up the process of getting the official patent issued, and that Hubbard personally benefitted by assisting Abrams, who had signed the consulting contract that provided Hubbard with income of $10,000 per month.

Hubbard argues: "There was no proof that Hubbard's continued contract with Capitol Cups would depend on anything that happened to S[i]02. There is clear evidence that Hubbard provided valuable services to Capitol Cups. There was, in the end, no proof of any violation of this statute as written." (Hubbard's brief at p. 89.) He also argues, "Certainly it is not unlawful for a legislator to use his state e-mail account, or to direct his subordinates to spend a bit of time helping out a substantial business employer in the legislator's district such as S[i]02." (Hubbard's brief at p. 88.) Again, Hubbard offers conclusory statements without citing any record evidence.

Hubbard testified that his work for Si02 was separate from his consulting contract with Capitol Cups and that he had been assisting Abrams because Abrams was a constituent. Hubbard also testified that he did not think he told Blades he

had "100,000 reasons" for helping Abrams, but that there were "hundreds of thousands of reasons" because, he said, Abrams had told him he was paying more than $100,000 in legal fees a day. (R. 7425-26)(emphasis added). Hubbard's intent in performing actions on Abrams's behalf was a question solely for the jury. E.g., White v. State, 227 So. 3d 541, 546 (Ala. Crim. App. 2016)(noting that intent is a state of mind or mental purpose, and is an issue for the jury to resolve). The jury could have inferred that Hubbard benefitted privately by keeping Abrams happy so that he would continue to employ Hubbard as a consultant, even though the consulting contract was with another of Abrams's companies.

A jury's verdict has a strong presumption of correctness, and it will not be overturned by this Court unless the verdict is found to be palpably wrong or contrary to the great weight of the evidence, and that, this Court has held, is a very limited category of cases. Thompson v. State, 97 So. 3d 800, 810 (Ala. Crim. App. 2011). This is not one of those cases. It was for the jury to evaluate Hubbard's credibility and the credibility of the other witnesses who testified as to this charge, to resolve conflicts in the evidence, and to determine

the weight to give to all the evidence. Based on our review of the record, Hubbard was not entitled to have the jury's verdict on Counts 11-14 set aside by the trial court based on the weight of the evidence.

VI.

Hubbard was convicted in Counts 6, 10, 16-19, and 23 of soliciting or receiving a thing of value from a principal, in violation of § 36-25-5.1(a), Ala. Code 1975. Hubbard addresses Count 6 and Count 10 together in one argument; he addresses Counts 16-19 together because those charges arose from the same set of circumstances; and he addresses Count 23 separately. We will address them as Hubbard does, however, because the same legal principles apply to all counts, we will address all of the arguments within this portion of the opinion.

Count 6 alleged that Hubbard intentionally solicited or received a thing of value -- currency or checks -- from a principal, APCI. Count 10 alleged that Hubbard intentionally solicited or received a thing of value -- currency or checks -- from a principal, Edgenuity, Inc., and/or E2020, Inc. Counts 16-19 alleged that Hubbard intentionally solicited or

received a thing of value -- a $150,000 investment in Craftmaster Printers -- from a principal. The State named the principals as follows: Count 16, Will Brooke, an executive committee board member of the BCA; Count 17, James Holbrook and/or Sterne Agee Group, Inc.; Count 18, Jimmy Rane, president of Great Southern Wood; Count 19, Robert Burton, president of Hoar Construction. Count 23 alleged that Hubbard intentionally solicited or received a thing of value -- assistance with obtaining new clients for Auburn Network and/or financial advice regarding Craftmaster Printers -- from a principal, Will Brooke.

Section 36-25-5.1(a), Ala. Code 1975, provides, in relevant part, that no principal shall offer or provide a thing of value to a public official, and no public official shall solicit or receive a thing of value from a principal. Section 36-25-1(34)a. defines a "thing of value" as: "Any gift, benefit, favor, service, gratuity, tickets or passes to an entertainment, social or sporting event, unsecured loan, other than those loans and forbearances made in the ordinary course of business, reward, promise of future employment, or honoraria or other item of monetary value." Section 36-25-

1(24), Ala. Code 1975, defines "principal" as: "A person or business which employs, hires, or otherwise retains a lobbyist. A principal is not a lobbyist but is not allowed to give a thing of value."

A. Count 6 and Count 10

Count 6 alleged that Hubbard intentionally solicited or received a thing of value -- currency or checks -- from APCI. Count 10 alleged that Hubbard intentionally solicited or received a thing of value -- currency or checks -- from Edgenuity, Inc. and/or E2020, Inc. Hubbard does not dispute that APCI and Edgenuity are principals, nor does he dispute that he received money from APCI and Edgenuity under consulting contracts he had with those companies. Hubbard argues that he should not have been convicted of Counts 6 and 10 because, he says, the money he received from APCI and Edgenuity was not a "thing of value" for purposes of the statute because it fit within two of the categories of exceptions to the general rule prohibiting a public official from soliciting or receiving a thing of value from a principal. Specifically, Hubbard argues that the money he received from APCI and Edgenuity was compensation for his

consulting services, § 36-25-1(34)b.10., and that APCI and Edgenuity paid full value for his consulting services, § 36-25-1(34)b.9. He also argues that the State failed to prove that he had any criminal intent when he entered into the consulting contracts with those companies. In a related, one-sentence argument, Hubbard states that his conviction should be reversed because the jury was not charged on the "full-value" exception.

1. A full discussion of the evidence related to Hubbard's consulting contract with APCI is set out in Part IV of this opinion.

At the close of the State's case, Hubbard made an oral motion for a judgment of acquittal, and he filed a written motion for a judgment of acquittal. The trial court denied the motions. Hubbard made an oral motion and filed a written motion for acquittal after all the evidence was presented, and the trial court denied those motions. Hubbard filed a motion for a new trial in which he argued that his conviction for Count 6 was against the weight of the evidence; the motion was denied by operation of law.

CR-16-0012

Hubbard argues that he was not guilty of this crime because, he says, there was no evidence that he intentionally committed the crime for which he was convicted and because, he says, his conduct fit within two exceptions to the "thing of value" requirement in the statute. Specifically, he argues that the money paid to him by APCI fit within § 36-25-1(34)b.10., which is an exception to the general rule prohibiting a public official or public employee from receiving a thing of value from a principal and that money he received from APCI was not a "thing of value" because, he says, it fit within the exception in § 36-25-1(34)b.9., that is, "[a]nything for which the recipient pays full value."

To the extent Hubbard's argument that the exceptions, above, applied in his case and prevented the State from proving his guilt beyond a reasonable doubt, that argument goes to the weight of the evidence. Resolution of a question of the weight of the evidence requires a determination of which party presented the greater amount of credible evidence as to an issue, and that question is one for the jury to decide. E.g., Frazier v. State, [Ms. CR-15-1484, Sept. 8, 2017] ___ So. 3d ___, ___ (Ala. Crim. App. 2017). "Once a

prima facie case has been submitted to the jury, this Court will not upset the jury's verdict except in extreme situations in which it is clear from the record that the evidence against the accused was so lacking as to make the verdict wrong and unjust." May v. State, 710 So. 2d 1362, 1372 (Ala. Crim. App. 1997).

To establish a prima facie case pursuant to § 36-25-5.1(a), the State had to prove that Hubbard, a public official, intentionally solicited or received cash or checks from APCI, a principal. The State established each of those elements. As explained above, APCI was a principal and it had provided $95,000 to Hubbard pursuant to a consulting contract. In his brief on appeal, Hubbard concedes each of these points.

To the extent Hubbard argues that the State presented "absolutely no evidence" indicating that he intentionally entered into the contract with APCI with the purpose of receiving the money in a way that violated the statute or with knowledge that APCI had that purpose in mind, that argument is one for the jury. See, eg., Pettibone v. State, 91 So. 3d 94, 116 (Ala. Crim. App. 2011).

The State presented ample evidence of Hubbard's intent to commit the charged crime. The testimony from Hamrick and Sanders established that Hubbard was hired because he was the Speaker of the House and a prominent figure in the Republican Party, and he had valuable contacts with other legislators. Hamrick and Sanders hoped that Hubbard could use his contacts to help APCI expand its presence to states outside of Alabama. Furthermore, Sanders sent an e-mail to the APCI board of directors expressing great satisfaction that a press release announcing Hubbard had been named chairman of the Southern Legislative Conference came on the heels of APCI's announcement that Hubbard had been hired as a consultant. The timing was significant to APCI, Sanders explained, because Hubbard was to use his legislative contacts to help APCI.

The State's evidence further tended to show that Hubbard entered into the contract with APCI knowing that the monthly payment of $5,000 was related to his official capacity as the Speaker of the House. Hubbard was hired in June 2012, but he did not meet with Sanders until August 2012 to begin to learn about APCI and the work he was expected to do for APCI. Hubbard did no official work for APCI from the time he was

hired, June 2012, through May 2013, when Kenny Sanders left APCI. Hubbard was, however, involved in legislation that was extremely important to APCI. Legislation involving PBMs in the Alabama Medicaid Department was going to be introduced, and APCI was able to have language included in the bill that could have resulted in APCI's having a monopoly on pharmacy business within the Alabama Medicaid system. Although members of Hubbard's staff were involved in drafting and reviewing the proposed language, Hubbard failed to disclose his business relationship with APCI until his chief of staff, Josh Blades, confronted him directly, after hearing that there had been rumors on the House floor about Hubbard's connection to the company. Even after the connection was disclosed and after his chief of staff urged him not to vote on the General Fund Budget bill that had the APCI-favored language in it, Hubbard cast his vote in favor of the bill. The jury could reasonably have inferred from the foregoing evidence that Hubbard intentionally violated that provision of the ethics law; thus, the State established the element of intent.

Hubbard's reliance on the fact that the terms of the contract prohibited Hubbard from working for APCI in Alabama

was a matter for the jury to consider, just as it was for the jury to decide the credibility of the witnesses and the weight of the evidence presented by the State and Hubbard.

For the foregoing reasons, it is abundantly clear that the State presented a prima facie case, and that the matter was correctly submitted to the jury for its consideration.

Hubbard's argument that the money he received from APCI was not a thing of value because, he says, it was compensation and, therefore, statutorily excluded from the definition of a "thing of value," presented a jury question. Section 36-25-1(34)b., Ala. Code 1975, provides: "The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof," and § 36-25-1(34)b.10., lists "[c]ompensation and other benefits earned from a non-government employer, vendor, client, prospective employer, or other business relationship in the ordinary course of employment or non-governmental business activities under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's public service as a public official or public employee." (Emphasis added.) The

jury could reasonably have inferred that the compensation Hubbard received from APCI was not, in fact, given under circumstances that made it clear that it was provided for reasons unrelated to Hubbard's service as the Speaker of the House. Although Hubbard testified that the consulting contract with APCI was for services outside Alabama and that the actions he took in Alabama on behalf of that company were no different from actions he took on behalf of other constituents in his district, the jury was free to reject all or part of that testimony, to weigh it in light of all the evidence presented, and to resolve any conflicts in the evidence.

Hubbard argues that he was wrongly convicted because, he says, § 36-25-1(34)b.9., Ala. Code 1975, applies to his case. That portion of the statute provides: "The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof," and lists "[a]nything for which the recipient pays full value." Hubbard argues that the exception "permits transactions between public employees or official and

principals, so long as the transaction is an exchange of fair and full value." (Hubbard's brief at p. 79)(emphasis added).

> "In determining the meaning of a statute, this Court looks to the plain meaning of the words as written by the legislature. Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect."

Pruitt v. State, [Ms. CR-16-0956, April 27, 2018)] ___ So. 3d ___, ___ (Ala. Crim. App. 2018)(internal quotation marks and citations omitted). See also IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992)("Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says." (quoted in State v. Turner, 96 So. 3d 876, 881 (Ala. Crim. App. 2011))).

Black's Law Dictionary defines "pay," in relevant part, as "[t]o give money for a good or service that one buys," "[t]o transfer money that one owes to a person, company, etc.," and "[t]o give (someone) money for the job that he or

she does; to compensate a person for his or her occupation...." Black's Law Dictionary 1309 (10th ed. 2014). The language of the statute here is clear and unambiguous. Hubbard, as a public official, was prohibited from soliciting or receiving a thing of value from a principal. Something for which the recipient "pays full value" is excluded from the definition of a thing of value. Thus, the exception in § 36-25-1(34)b.9. would have applied only if Hubbard, as a recipient, had paid full value for something he solicited or received from a principal. Hubbard received nothing for which he paid full value. Hubbard attempts to modify the plain meaning of the statute when he states that the full-value exception applies when there is an exchange of fair and full value between a public official and a principal. The words in the statute must be given their plain, ordinary, and commonly understood meaning. Hubbard, the recipient of the money from APCI, paid nothing.

Hubbard argues, in part of a single sentence on page 79 of his brief, again without citing to the record or to legal authority, that the trial court should have instructed the jury on the "full-value" exception to the statute. The trial

court and the parties discussed the matter at length, and the trial court determined that, based on the evidence presented, the full-value exception to the statutory prohibition against a public official soliciting or receiving a thing of value from a principal did not apply to Hubbard's contract with APCI. (R. 7655-7664.) For the reasons discussed above, the trial court was correct. Therefore, we find no abuse of discretion in the trial court's decision not to charge the jury on the full-value exception under § 36-25-1(34)b.9. E.g., Thompson v. State, 153 So. 3d 84, 151 (Ala. Crim. App. 2012)(noting that the formulation of a jury charge is left to the trial court's broad discretion).

There is a strong presumption that the jury's verdict is correct. That presumption may be overcome when the verdict is palpably wrong or contrary to the great weight of the evidence. Based on the record before us, we conclude that the verdict does not present one of those extreme situations in which it is clear from the record that the evidence against the accused was so lacking as to make the verdict wrong and unjust.

2. Count 10 -- Edgenuity/E2020

CR-16-0012

Hubbard d/b/a Auburn Network had a consulting contract with Edgenuity, Inc., a principal, and he was convicted in Count 10 of soliciting and receiving money from Edgenuity. The State's evidence tended to show the following.

Michael Humphrey testified that he had been the president of Education 2020 ("E2020"), a company that provided online digital curriculum to schools. He explained the concept of digital curriculum:

> "If you can think about when you were in school and you had a textbook, today's world, that textbook is almost living. So there is a lot [of] interactivity, a lot of media, but it's teaching the same courses. Algebra I, Algebra II, those type of things. We had those courses and sold those to public schools mainly. Probably 95 percent of our business is public schools."

(R. 5626.) E2020 was sold in July 2011, and Humphrey then became the executive vice president for the same company, which was renamed Edgenuity, Inc., approximately one year after the sale. One of Humphrey's duties at E2020 and Edgenuity was to manage the consultants and lobbyists the company hired. Edgenuity sold its products in Alabama and in other states. In Alabama, local school boards made the decision about whether to purchase Edgenuity's products, and

money for the products came from the Alabama Department of Education or from federal funds.

Humphrey and Hubbard met by chance in late 2011 at an education conference in California that only legislators and vendors attended. Noticing that Hubbard was wearing a name tag that identified him as being from Alabama, Humphrey asked Hubbard if he knew Ferrell Patrick, a lobbyist who worked for Edgenuity in Alabama and other states. Hubbard said that he and Patrick were friends. Humphrey said that Patrick had a network of contacts across the country, and that Patrick's contacts were useful to Edgenuity. He said that Patrick reviewed all of the lobbying and consulting contracts Humphrey entered into.

Within a few weeks after the conference, he learned that Hubbard was the Speaker of the House. Humphrey spoke with Patrick about Hubbard, and he told Patrick that he was interested in hiring Hubbard to work for Edgenuity. Humphrey testified that in 2011 a digital curriculum was not a topic many state legislators had dealt with, so he thought Hubbard could help Edgenuity get access to legislators and leaders in other states so Humphrey could talk with them about what

Edgenuity did. Patrick spoke with Hubbard about working for Edgenuity, but he was not acting on Humphrey's behalf or at his instruction. Hubbard and Edgenuity entered into a contract for consulting services in March 2012.

Humphrey read into the record a February 6, 2012, e-mail from Hubbard to Patrick:

> "Thank you for meeting with me this morning, and I am very excited about the opportunity to work with some of your clients and appreciate your assistance. Attached is a generic consulting agreement for Business Development and Sales Services which has already been blessed by the Alabama Ethics Commission. It probably goes a bit overboard to protect the company, but that's better than being too vague. As you will see, it specifically prohibits the use of my office for personal gain and states that the scope of work is outside the borders of the State of Alabama.
>
> "Please take a look at this and let me know your thoughts. If you think it is too legal sounding, we can dumb it down. On another note, I met with Tommy Bice today and talked to him about I-Teach. He is reviewing the material and will get back with me on setting up a meeting. I will let you know.
>
> "Thanks again and let me know what you think about the generic agreement."

(R. 5641-42.)

Humphrey testified that, as of the date of that e-mail, he had not been aware that Hubbard and Patrick had met and discussed Hubbard's working for some of Patrick's clients.

Humphrey also explained that Tommy Bice was the head of the Alabama Department of Education and that Patrick had a lobbying relationship in Texas with I-Teach, a company that offered certification for teachers.

Humphrey read into the record a March 2012 e-mail from Hubbard to Patrick:

> "Ferrell: I spoke with Sumner. He says that the mantle of your office is a boilerplate phrase that they use to mean I can't use my office to force someone to do anything. It does not mean I can't identify myself as the Speaker or to call another Speaker to open a door. He also said he knew that I was not asking about doing work with the State, but wanted to include it just in case there were any questions. He said I am free to do anything with anyone outside the State of Alabama. The letter's attached. Thanks for everything. Let me know what I need to do next."

(R. 5647.) Humphrey said that Patrick forwarded the e-mail to him, and he forwarded it to the new owners of the company. Humphrey read his e-mail to the new owners:

> "This is the letter we discussed from the Alabama Ethics Commission. I am considering a deal with the House Speaker in Alabama. As you know, he can get us in front of any Speaker in the country regardless of party, but way more influence with the R's. I think this would help us in states that we do not have a lobby presence. I have this in my budget but I wanted you to review."

(R. 5649.)

One of the new owners of the company replied by e-mail to Humphrey, in relevant part, as follows:

> "I think this reads fine. Seems to me the worst case is that in order to protect yourself, Mike Hubbard would need to file a copy of any letter agreement between his company Auburn Network and E2020 with the Ethics Commission. And to help him out, maybe the letter should specify, carve out any Alabama based opportunities."

(R. 5650-51.)

Humphrey said that, to his knowledge, Hubbard did not file a copy of any letter agreement between Auburn Network and E2020. Humphrey identified a copy of the ethics letter that he had relied on in hiring Hubbard, and he testified that the letter did not mention his name or the company's name.

Humphrey drafted a contract and forwarded it to the new owners of the company. He read into the record a copy of the e-mail he sent in conjunction with the contract:

> "Here is the proposed lobby contract for Mike Hubbard. Mike is the current Speaker of the House in Alabama. My thought in using him would be in -- for intros in the House and Senate leadership in states where we do not have lobby support, and even in states where we do, when necessary. .... He cannot lobby in Alabama but could certainly help us elsewhere. Highly respected, and I am positive he can help us."

(R. 5655-56.)[12]

When Hubbard signed the contract, he returned it to Patrick with an e-mail that stated, in relevant part: "I edited [it] to make the agreement between Auburn Network and E2020 rather than directly with me. That way E2020 is contracted with Auburn Network, Inc., so I only have to list Auburn Network as my employer." (R. 5667.)

Humphrey testified that part of the reason he hired Hubbard was because he was a legislator with an ability to work outside Alabama:

> "I wanted to take advantage of his relationships outside the state where I could go speak on our behalf. I didn't want him to speak on our behalf. I really wanted him to speak on my behalf, to let the person know that when I showed up, that I was an honorable guy and I am not -- I wasn't there under, you know, bad circumstances. I just had an issue and I wanted to talk about it."

(R. 5664.) He further explained his intention:

> "[M]y idea was to use Mike to say, okay, maybe there is a particular issue in Pennsylvania and I can't get to the Speaker or a senior person on the Education Committee in Pennsylvania, could you find out who that person is? Here is his name. I can give you the name. I can't get to him. Could you make a call and get me a meeting with this guy? Get

[12]Humphrey testified that he had used "lobbyist" as a generic term and that he should have identified Hubbard as a consultant.

> me in front of this guy, let me go meet him. That's what I wanted him to do in the scope of what I'm describing here. That was my original idea."

(R. 5661-62.)

Humphrey testified about several contacts Hubbard made on behalf of Edgenuity's interests, including a telephone call to Bobby Harrell, South Carolina's Speaker of the House, to let him know that a school district in the speaker's home town of Charleston had approved a proposal with Edgenuity. Humphrey thought it would be good to let the speaker know about the contract. "I didn't know him at all and was hoping that Mike through his relationships knew him," so he could tell Harrell that Edgenuity "guys are good guys," and that the district made a good decision. (R. 5679.) He wanted Harrell to talk to the superintendent of the school district to let him know that he was aware of Edgenuity. Hubbard made the requested contact and, Humphrey said, Harrell certainly would not have taken a call from Humphrey, and he would not have called the superintendent about the contract with Edgenuity without Hubbard's call to him. In a subsequent e-mail to Humphrey, Hubbard provided information about an additional contact with Speaker Harrell:

> "I was just in Alaska for the National Speakers Conference. It is a great opportunity to spend time and establish a relationship with fellow speakers. Speaker Harrell's office called for more information on the Charleston contract. I discussed with him on the phone a couple of weeks ago and again in Alaska. I am flying back now and have asked Ferrell to call and provide any details to the staffer."

(R. 5697.)

Humphrey testified that Edgenuity paid Hubbard $7,500 per month.

Dr. Craig Pouncey testified that he was the former chief of staff at the Alabama Department of Education ("the Department"), and that many of his duties were related to the financial aspects of the Department, including how the Department's money was spent. He served in that position during the time Hubbard had a contract with Edgenuity. Pouncey testified that Ferrell Patrick, Edgenuity's lobbyist, asked him if he could set up a meeting with Edgenuity and the State Superintendent of Education. Pouncey testified that he "ran a buffer" between the State Superintendent and the legislature. (R. 5856.) Representatives of Edgenuity met with the deputy superintendent for instruction at the Department and gave a demonstration of their products. During that meeting, Patrick mentioned Hubbard. As a result of the

meeting, the Department awarded some grant money that went through the school districts to Edgenuity.

To establish a prima facie case pursuant to § 36-25-5.1(a), the State had to prove that Hubbard, a public official, intentionally solicited or received a thing of value, i.e., cash or checks from Edgenuity, a principal. The State established each of those elements. As explained above, the State's evidence established that Edgenuity was a principal -- a point Hubbard does not dispute -- and that it provided Hubbard $7,500 per month pursuant to a consulting contract -- a point Hubbard also does not dispute. To the extent Hubbard argues that the State presented "absolutely no evidence" he intentionally entered into the contract with Edgenuity with the purpose of receiving the money in a way that violated the statute, or with knowledge that Edgenuity had that purpose in mind, that argument is one for the jury. See, e.g., Pettibone v. State, 91 So. 3d 94, 116 (Ala. Crim. App. 2011).

As he did in Count 6, Hubbard argues here that he was not guilty of this crime because, he argues, his conduct fit within two exceptions to the "thing-of-value" requirement in

the statute. First, he argues that the money Edgenuity paid him fit within § 36-25-1(34)b.10., which is an exception to the general rule prohibiting a public official or public employee from receiving a thing of value from a principal, a lobbyist, or a subordinate of a lobbyist. As fully discussed above relative to Count 6, Hubbard's argument presented a jury question. Section 36-25-1(34)b., Ala. Code 1975, provides: "The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof," and § 36-25-1(34)b.10., lists "[c]ompensation and other benefits earned from a non-government employer, vendor, client, prospective employer, or other business relationship in the ordinary course of employment or non-governmental business activities under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's public service as a public official or public employee." (Emphasis added.) The jury could reasonably have inferred that the compensation Hubbard received from Edgenuity was not, in fact, given under circumstances that made it clear that it was provided for reasons unrelated to Hubbard's service as the

Speaker of the House. So, too, was it the province of the jury to consider the credibility of the witnesses and the weight of the evidence, and to resolve any conflicts. Hubbard testified that Humphrey approached him through Ferrell Patrick about consulting with the company, that the consulting contract was for work only outside Alabama, and that he did no work for Edgenuity in Alabama. Dr. Pouncey testified that Patrick spoke about Hubbard during the meeting he arranged between Edgenuity and Department staff, and that the meeting resulted in Edgenuity receiving grant funding from the Department. The jury was free to weigh Hubbard's testimony in light of all the evidence presented to determine whether a particular course of action was required as a condition of his compensation, or whether the compensation was related to his public service as a public employee.

Humphrey testified repeatedly that he hired Hubbard in large part because he was the Speaker of the House in Alabama and, therefore, had contacts with speakers of the house in all other states. Humphrey repeatedly said that his intent from the outset had been to use Hubbard to pave the way for him by contacting speakers in other states when Humphrey wanted to

talk to them about Edgenuity. He testified that he "wanted to take advantage of [Hubbard's] relationships" with speakers outside Alabama to accomplish that. (R. 5664.) Humphrey testified about Hubbard's success at helping him make contacts with officials in other states, and he read an e-mail from Hubbard in which Hubbard detailed how, at the National Speakers Conference, he and the South Carolina speaker discussed Edgenuity's contract in Charleston and said that he was going to provide additional information to the South Carolina speaker that he had requested. Furthermore, during contract negotiations with Edgenuity, Hubbard sent an e-mail to Ferrell Patrick stating that he had amended the proposed contract to make the agreement between Auburn Network and E2020 rather than directly with him, so that he had to list only Auburn Network as his employer, and not E2020 or Edgenuity, as it was later named.

Hubbard argues that a second exception applied to the circumstances of his case and that its application to his case should have prevented a conviction. Section 36-25-1(34)b.9. provides: "The term, thing of value, does not include any of the following, provided that no particular course of action is

required as a condition to the receipt thereof," and lists "[a]nything for which the recipient pays full value." Hubbard argues that the exception "permits transactions between public employees or official and principals, so long as the transaction is an exchange of fair and full value." (Hubbard's brief at p. 79)(emphasis added). As discussed in detail above, the exception in § 36-25-1(34)b.9. would apply only if Hubbard, as a recipient, had paid full value for something he solicited or received from Edgenuity. Hubbard received nothing from Edgenuity for which he paid full value. Because the full-value exception did not apply to the circumstances presented here as to Edgenuity, there was no abuse of discretion in the trial court's decision not to charge the jury on that exception.

There is a strong presumption that a jury's verdict is correct. That presumption may be overcome when the verdict is palpably wrong or contrary to the great weight of the evidence. Based on the record before us, we find that the verdict here does not present one of those extreme situations in which it is clear from the record that the evidence against

the accused was so lacking as to make the verdict wrong and unjust.

B. Count 23

Hubbard next challenges his conviction on Count 23. In Count 23, Hubbard was charged with violating § 36-25-5.1(a), Ala. Code 1975, for intentionally soliciting or receiving a thing of value, i.e., assistance with obtaining new clients for Auburn Network and/or financial advice regarding Craftmaster Printers, from a lobbyist, subordinate of a lobbyist, or principal, Will Brooke. Hubbard argues that he was wrongfully convicted because, he says, Brooke was not a principal. Hubbard further argues that there was undisputed evidence that Brooke gave him financial advice because they were friends and that § 36-25-1(34)(b)(3) provides that a thing of value given out of friendship does not violate the statute.

Hubbard argues that he was not guilty of Count 23 because Brooke was not a principal, that Brooke gave him business-related advice because they were friends, and that § 36-25-1(34)b.3., Ala. Code 1975, states that anything given by a friend under circumstances that make it clear that it was not

given because of the recipient's official position is not considered a thing of value under § 36-35-1(34)a. Hubbard is challenging the weight of the evidence.

In Part V of this opinion we set out in detail the legal principles relevant to challenges to the weight of the evidence. The weight of the evidence refers to a determination by the jury that the greater amount of credible evidence favored the State. Our review of the record leads us to conclude that the conviction on Count 23 was not against the weight of the evidence.

Brooke testified that he was an executive vice president and senior partner at an asset-management firm, and that he had been an executive vice president and managing partner before 2014. He said he is also an attorney and that he had practiced for 10 years in the areas of business and financial matters. He stated that he had known Hubbard since 2008 or 2009, through Republican Party political circles. Brooke said he had been on the board of directors of the BCA since 2009. Brooke testified that the BCA has a system of revolving board chairmen so that the organization retains continuity in leadership. He explained that a person interested in a

leadership position first becomes a vice chairman-in-waiting, then the vice chairman, then ultimately the chairman of the board. The following year the chairman becomes the past-chairman of the board, and thereafter remains on the BCA board during his tenure in the organization. Brooke said he was the vice chairman in 2010 and the chairman of the BCA board in 2011, then rotated into a position as the immediate past-chairman, and he has remained on the board since that time. Brooke said that the BCA hires lobbyists and that those lobbyists report to Billy Canary, the BCA's president. Canary reports to the executive committee of the BCA board, and the executive committee includes the revolving chairpersons, the BCA officers, and others involved in active leadership roles in the BCA.

The BCA has committees that look into various areas relevant to Alabama businesses, he said, such as labor and employment issues. Each year, legislative priorities are identified by the BCA and a legislative agenda is prepared and then adopted by the BCA board. The BCA legislative agenda is presented, among other places, to the Alabama Legislature, and the BCA promotes its passage there. Brooke testified that

BCA's legislative agenda is presented annually to the Speaker of the House in an official meeting. Brooke testified that the BCA hopes that the Speaker and the legislature will advance the BCA agenda. Brooke did not present the BCA's legislative agenda to Hubbard, but he had been in Hubbard's office along with Canary, the president and chief executive officer of the BCA, and other BCA staff members when Canary presented the legislative agenda to Hubbard. Brooke testified that Canary was "not just operating on his own," and that he was not "somebody that just shows up with an agenda." (R. 5962.)

Canary testified that a weekly meeting with Hubbard was scheduled while the legislature was in session, and that others typically in attendance included Hubbard's chief of staff, Josh Blades, John Ross, and Dax Swatek. Ross and Swatek were partners in a lobbying firm. The group discussed a variety of issues each week, he said. Canary said he viewed the meeting "as a kitchen cabinet with the Speaker."[13] (R. 6293.)

---

[13]"Kitchen cabinet" is defined as "[a]n unofficial and informal body of noncabinet advisers who often have more sway with the executive than the real cabinet does." Black's Law Dictionary 243 (10th ed. 2014).

Brooke testified that Hubbard had never sought financial advice from him, but that Hubbard approached him in March 2011 and made him aware that his employment with IMG, from which he earned an annual salary of $132,000, was going to be terminated on March 31, 2012. Brooke said that Hubbard also began asking him for help in securing other employment to replace the income he would lose after the termination of his employment with IMG. Hubbard later asked Brooke to review a consulting agreement with IMG he intended to propose, the terms of which provided that Hubbard would receive $75,000 in compensation annually. Brooke testified that, despite his many recommendations to Hubbard about ways to generate income or obtain new employment, Hubbard found none, and he continued to press Brooke for help in finding a job or consulting clients. Brooke identified many e-mails between him and Hubbard beginning in 2011 regarding Hubbard's continued requests for help in securing employment. In an April 2011 e-mail, Hubbard sent Brooke a biography and resume for Brooke to share with potential employers. Brooke read a portion of the e-mail at trial, in which Hubbard said he was still trying to figure out his next step professionally. Hubbard also said:

"Please assure Maggie that the language for the Boys and Girls Club is in the general fund budget, and I will make certain it stays there. We ... will have it in the committee this Wednesday and on the floor next Tuesday." (R. 5968-69.) Brooke explained that his wife, Maggie, had been involved in volunteer leadership in the Boys and Girls Clubs for many years and that, each year she had to go to the Alabama Legislature and ask for funding through TANF, Temporary Assistance for Needy Families, and he said that the legislature cut back on such programs every year. Brooke acknowledged that in several e-mails to him, Hubbard mentioned his support for Boys and Girls Clubs and any actions he had taken on their behalf in the legislature and then raised questions and concerns about his personal employment situation. The prosecutor asked Brooke if he had ever asked Hubbard to stop combining his personal concerns with what he was doing professionally. Brooke said: "I would have preferred that that not be there, but it ... didn't bother me. It didn't influence me. It's his way of selling me to try and get help with the job situation, I guess." (R. 6004-05.) Brooke also testified: "I think he's trying to convince me

that he's my friend; he is concerned for me and he hopes I will be concerned for him." (R. 6005.)

Brooke identified e-mails from Hubbard in which Hubbard said he might have to resign from the legislature in order to pursue employment elsewhere. Brooke replied by e-mail and said it would be a huge loss for Alabama if he had to resign, but that Hubbard had to take care of his family. Brooke again told Hubbard that he had spoken to many business people about Hubbard's need for employment but that he had found no answer.

Brooke testified that he shared his concerns about Hubbard's inability to find employment:

> "[W]hen the Speaker approached me, I then went to Billy Canary and the others that were in the leadership group at the BCA to say, basically, we have got a problem, the Speaker is asking for help finding a job. And just as the Speaker says in this e-mail, that presents the risk of conflict of interest. So the question was, can we untie this issue to find a way to provide financial support or allow the Speaker to generate financial support in a way that does not compromise his ability to serve as Speaker."

(R. 5997-98.) He said they were unable to find a way to help Hubbard with his financial problems but that he had made serious efforts to do so. Brooke said he "considered it to be a real problem, because a guy that does not have an income as

-- as a major leadership position in the State is at risk. (R. 5989.) The prosecutor asked whether a person in that position was "at risk of being under the influence of people who might offer him money," and Brooke replied: "That's always a risk." (R. 5989.)

Brooke also testified that Hubbard had approached him about Craftmaster Printers, a company of which Hubbard was a part owner, and which was experiencing significant financial difficulties in 2012. The bank that had loaned the company money had indicated that it might call the loan. Hubbard went to Brooke about the company's financial distress and asked Brooke if he could help him through it. Brooke asked Hubbard for Craftmaster's financial statements, audits, and other information so he could better understand the business in order to advise him. Brooke testified at great length about the details related to Craftmaster's financial problems, and said that he had suggested a plan to Hubbard as a proposed solution, which included Hubbard securing $1.5 million, through 10 people each investing $150,000 in the company in exchange for shares in the business. Brooke said:

> "[Craftmaster] had too much debt related to equipment and materials that they had bought over

> time, which didn't leave enough money in the bank to operate the business. So I suggested to him that they should raise money to get the bank taken care of, to take care of some of the past payables that were overdue, and he was optimistic about their ability to grow the business."

(R. 6023-24.)

Brooke continued:

> "If [Hubbard] could get enough capital in there, continue growing the business, he could pay himself a living wage and continue to do what he was doing as Speaker of the House. I believed at that time Mike was doing an excellent job, and wanted him to remain free and independent, and keep doing an excellent job, and also didn't particularly want him to resign. And so this was a way he could help himself and solve the problem."

(R. 6045-46.) Brooke said that he became an investor in the company.

Brooke testified that he met Hubbard in the context of their business and political connections in 2007, and that they developed more of a relationship while Brooke was involved in the leadership of the BCA. He and Hubbard never socialized as friends outside the work or political setting, but he considered Hubbard to be a friend. Brooke said that he reviewed Craftmaster's financial situation and recommended a plan to Hubbard because they were friends, and it had nothing to do with Hubbard's position as Speaker of the House.

CR-16-0012

Josh Blades, Hubbard's chief of staff, testified that Will Brooke was a prominent Birmingham businessman who was politically active. He said that Brooke had been on the board of directors for the BCA for a number of years, and was the chairman of the board at some point while Blades was Hubbard's chief of staff. Blades described Brooke as active in his role as a board member and chairman of the board: he went to the State house to address issues the BCA was interested in; he attended BCA meetings; and he occasionally was involved in issues pertaining to some bills pending in the legislature, for example gun policies for businesses.

Blades identified an e-mail Hubbard wrote to him on April 25, 2011, and he read it into the record:

> "I really need for the TANF funds to be restored back to 100 percent. [Representative Jim Barton on the budget committee] cut them 15 percent. That is big for the Boys and Girls Clubs and Will Brooke's wife is on the Board. You know Will is very ... important to us and to me, especially now."

(R. 4696.) Blades testified that TANF funds are "Temporary Assistance for Needy Families," and that the funds are administered through the Department of Human Resources.

We set out in detail in Part V of the opinion the legal principles relevant to reviewing a challenge to the jury's

verdict. Briefly, once a prima facie case has been made and the case has been submitted to the jury, there is a strong presumption in favor of the jury's verdict, and this Court will reverse a verdict only in an extreme situation when it is clear from the evidence that the verdict is palpably wrong and unjust.

To establish a prima facie case pursuant to § 36-25-5.1(a), the State had to prove that Hubbard, a public official, intentionally solicited or received a thing of value -- assistance with obtaining new clients for Auburn Network and/or financial advice regarding Craftmaster Printers -- from Brooke, a principal. Based on the foregoing evidence, and viewing the evidence in the light most favorable to the prosecution, as we must, we have no difficulty concluding that the State established a prima facie case and that the jury could reasonably have found the defendant guilty beyond a reasonable doubt.

Hubbard's argument that he should not have been convicted because the financial plan and assistance Brooke gave him were motivated by friendship presented a jury question. Section 36-25-1(34)b.3. provides: "Relevant factors [indicating

whether a thing of value was given out of friendship] include whether the friendship preexisted the recipient's status as a public employee, public official, or candidate and whether gifts have been previously exchanged between them." Hubbard's assertion that he and Brooke were friends and that the thing of value was exchanged out of friendship was based on the jury's consideration of a series of factors and was determined based on the evidence. The intent of both Hubbard and Brooke was relevant to this decision, and intent is nearly always a jury question. Pettibone v. State, 91 So. 3d 94, 116 (Ala. Crim. App. 2011). In reaching its guilty verdict, the jury determined that Brooke did not give Hubbard a thing of value under circumstances that made it clear that it was motivated by friendship and not by Hubbard's official status as Speaker of the House.

Hubbard argues that Brooke was not a principal because the statute provides that a principal is a person or business that hires a lobbyist, and Brooke did not do so. James Sumner, the former director of the Alabama Ethics Commission and an expert witness at trial, testified:

> "What we have always said is that, clearly the person who signs on behalf of that business is a

> principal. But there are others, decision makers, who are officers. And of those two, can be and shall be, considered as principals as well. That could be the officers. It could be like an executive committee of the company and -- and so forth, and -- but it is -- for a company, it is broader than just one individual."

(R. 5547.)

Sumner further explained that, in political-interest groups or advocacy organizations, several people would be considered principals: presidents, vice presidents, chairs, vice chairs, and the leadership at the top of the organization. Therefore, based on the evidence presented at trial, the jury could reasonably have found that Brooke was a principal in the BCA. A jury's verdict is due a strong presumption of correctness, but may be set aside if it is palpably wrong or against the great weight of the evidence. Based on the record before us, we conclude that the verdict does not present one of those extreme situations in which it is clear from the record that the evidence against the accused was so lacking as to make the verdict wrong and unjust. Therefore, Hubbard is not have been entitled to any relief on Count 23.

C. Counts 16-19

CR-16-0012

Hubbard was convicted of Counts 16-19 for violating § 36-25-5.1(a), Ala. Code 1975. In each of the four counts, Hubbard, a public official, was charged with intentionally soliciting or receiving a thing of value -- a $150,000 investment in Craftmaster Printers -- from a principal. The State named the investors as follows: Count 16, Will Brooke, an executive committee board member of the BCA; Count 17, James Holbrook and/or Sterne Agee Group, Inc.; Count 18, Jimmy Rane, president of Great Southern Wood; Count 19, Robert Burton, president of Hoar Construction. Hubbard argues, at pp. 54-68 of his brief, that he should not have been convicted of the crimes because, he says, Brooke, Rane, and Burton were not principals, and because the investments were not things of value as defined by statute.[14] Hubbard is arguing that his convictions were against the weight of the

[14]In the written motion for a judgment of acquittal he filed at the conclusion of the State's case, Hubbard argued that the investments Brooke, Rane, and Burton made were not things of value as defined in the statute because they were clearly motivated by friendship. § 36-25-1(34)b.3., Ala. Code 1975. (C. 5346.) He does not pursue this argument on appeal, so it is deemed abandoned. E.g., Sharifi v. State, 239 So. 3d 603, 607-08 (Ala. Crim. App. 2016). Hubbard does, however, assert the friendship exception as to Will Brooke in Count 23, and we have addressed that argument in the preceding section of this opinon.

evidence, an argument that must be raised in a motion for a new trial. Hubbard made a motion for a new trial and argued that the convictions were against the weight of the evidence, and the motion was denied by operation of law.

We set out in detail in Part V of this opinion the legal principles relevant to reviewing a challenge to the jury's verdict. After a prima facie case has been made and the case has been submitted to the jury, there is a strong presumption in favor of the jury's verdict, and this Court will reverse a judgment entered on a jury verdict only in an extreme situation when it is clear from the evidence that the verdict is palpably wrong and unjust.

To establish a prima facie case pursuant to § 36-25-5.1(a), the State had to prove that Hubbard, a public official, intentionally solicited or received a thing of value -- $150,000 -- from a principal.

Section 36-25-5.1(a), Ala. Code 1975, provides, in relevant part, that no principal shall offer or provide a thing of value to a public official and that no public official shall solicit or receive a thing of value from a principal. Section 36-25-1(24), Ala. Code 1975, defines

"principal" as: "A person or business which employs, hires, or otherwise retains a lobbyist. A principal is not a lobbyist but is not allowed to give a thing of value."

Section 36-25-1(34)a. defines a "thing of value" as: "Any gift, benefit, favor, service, gratuity, tickets or passes to an entertainment, social or sporting event, unsecured loan, other than those loans and forbearances made in the ordinary course of business, reward, promise of future employment, or honoraria or other item of monetary value." Section 36-25-1(34)b. provides: "The term, thing of value, does not include any of the following, provided that no particular course of action is required as condition to the receipt thereof," and includes 18 categories of items that are exceptions to the general rule in § 36-25-1(34)a.

As more fully discussed in Part VI.B. of this opinion, Hubbard was a part owner in Craftmaster Printers, and the company was in financial trouble. The company owed $300,000 in back taxes, and Hubbard said its lender, Regions Bank, was considering calling for payment of a loan. Hubbard asked Brooke for financial advice, and Brooke suggested a plan that would bring $1.5 million from investors into the company so

that the company could pay its tax debt and have working capital to continue operating. The charges in Count 16-19 are related to some of the investors in Craftmaster.

As to each count, Hubbard argues that his convictions must be set aside because the $150,000 investment was not a thing of value pursuant to § 36-25-1(34)b.9., which excludes "[a]nything for which the recipient pays full value." Hubbard argues that the exception "will allow for exchanges in which the lobbyist or principal is either buying or selling the 'thing' for 'full value.'" (Hubbard's brief at p. 56.) He says the "investments in Craftmaster were not 'things of value' if the investors paid full value for the equity that they were buying and if they received full value for what they paid." (Hubbard's brief at p. 58.) Hubbard made virtually the same argument with regard to Counts 6 and 10, and we addressed it there. See discussion in Part VI.A. of this opinion. Our analysis is the same here.

The language of the statute here is clear and unambiguous. Hubbard, as a public official, was prohibited from soliciting or receiving a thing of value from a principal. Something for which the recipient "pays full

value" is excluded from the definition of a thing of value. Thus, the exception in § 36-25-1(34)b.9. would have applied only if Hubbard, as a recipient, had paid full value for something he solicited or received from a principal. Hubbard received $150,000 from each investor, and he paid nothing for the money he received.

Hubbard attempts to modify the plain meaning of the statute when he states that the full-value exception applies when there is an exchange of fair and full value between a public official and a principal. The notion that "the investors paid full value for the equity that they were buying and ... they received full value for what they paid," is not a reasonable interpretation of the statute. Therefore, the trial court correctly determined that the full-value exception to the statutory prohibition against a public official's soliciting or receiving a thing of value from a principal did not apply to the Craftmaster investments.

Hubbard then argues that, "even if there were a debatable question of the fact whether the investors paid full value for their investment," his convictions on Counts 16-19 were improper because the trial court refused to charge the jury on

this aspect of the definition of "thing of value." (Hubbard's brief at p. 58.) For the reasons discussed above, the trial court correctly determined that the full-value exception to the statutory prohibition against a public official's soliciting or receiving a thing of value from a principal did not apply to the Craftmaster investment money Hubbard received. Therefore, we find no abuse of discretion in the trial court's decision not to charge the jury on the full-value exception under § 36-25-1(34)b.9. E.g., Thompson v. State, 153 So. 3d 84, 151 (Ala. Crim. App. 2012)(noting that the formulation of a jury charge is left to the trial court's broad discretion).

Hubbard argues that Brooke, Rane, and Burton were not principals and that, as a result, he was wrongfully convicted of Counts 16, 18, and 19.[15] A principal is "[a] person or business that employs, hires, or otherwise retains a lobbyist." § 36-25-1(24), Ala. Code 1975. He argues that "the definition is framed around this question: whom does the lobbyist represent? With whom does he have a contract of

[15]Hubbard does not argue that his conviction on Count 17 involving the $150,000 investment from James Holbrook and/or Sterne Agee is due to be set aside on the ground raised here.

employment, hire, or retention? The answer here, as all of the evidence shows, is the Business Council, Great Southern Wood, and Hoar Construction -- not Mr. Brooke, Mr. Rane, or Mr. Burton." (Hubbard's brief at p. 61.) Hubbard's claim about what "all of the evidence" shows is a bare assertion unsupported by any discussion of the relevant testimony or any citations to the record. We will briefly summarize the relevant facts from the record so that we can address Hubbard's assertion.

Count 16 charged that Hubbard solicited and received the $150,000 Craftmaster investment, a thing of value, from Will Brooke, an executive committee board member of the BCA and a principal. In Part VI.B., above, in our discussion of Count 23, we set out in detail many of the circumstances surrounding Brooke's involvement with Hubbard and Craftmaster Printers, including Brooke's creation of a suggested financial plan. After Brooke created the financial plan that would help Hubbard save Craftmaster, Hubbard asked Brooke to invest $150,000 in Craftmaster, and Brooke did so. Hubbard argued in his discussion of Count 23 that Brooke was not a principal, and we rejected his argument. We adopt our analysis and

conclusion here. Based on the terms of the statute and the evidence presented, the jury could reasonably have found Brooke to be a principal and, by its guilty verdicts as to Count 16 and Count 23, the jury did so.

As to Count 18, the jury determined that Jimmy Rane, the president of Great Southern Wood, was a principal. Rane testified that Great Southern Wood employs a lobbying firm. When the prosecutor asked Rane who initially hired the lobbying firm, Rane said the company hired the firm, "[a]nd I'm the president of Great Southern, so I guess the answer would be, I did." (R. 6229.) He said that hiring the lobbying firm was one of the decisions he, as president of the company, had to make. The State produced a form from the Alabama Ethics Commission that listed Great Southern Wood as the principal, and listed Rane as the person signing for the principal. Rane testified that Hubbard had told him that Craftmaster was in trouble financially and needed some relief. Hubbard gave Rane information on the company and told him that his participation as an investor would be a huge help. Rane invested $150,000 in Craftmaster. The jury could, and did, reasonably decide that Rane was a principal. Not only did

Rane testify that he hired the lobbying firm, but James Sumner, the former chairman of the Ethics Commission, testified that a person who signs on behalf of a business is considered a principal. As to Count 18, Hubbard's argument fails.

Count 19 charged that Hubbard received a thing of value from Robert Burton of Hoar Construction. Burton testified he was president of Hoar Holdings, that Hoar Construction was a construction company within the holding company, and that he was president of the construction company, as well. He identified himself as the "boss" of Hoar Construction. (R. 6189.) Hoar Construction has employed several lobbyists, he said, but he was not listed as the principal on the State forms required for registration of lobbyists. Burton testified that the company's executive vice president and legal counsel had signed for the principal, Hoar Construction.

Burton testified that Hubbard told him that his printing business was experiencing financial difficulties and that he was having to do some refinancing. Hubbard asked him to make an investment in the company, and he invested $150,000 in Craftmaster.

As to whether Burton could be considered a principal, we discussed in Count 23, that James Sumner, the former director of the Alabama Ethics Commission and an expert witness at trial, testified:

> "What we have always said is that, clearly the person who signs on behalf of that business is a principal. But there are others, decision makers, who are officers. And of those two, can be and shall be, considered as principals as well. That could be the officers. It could be like an executive committee of the company and -- and so forth, and -- but it is -- for a company, it is broader than just one individual."

(R. 5547.)

Based on the statute and the evidence presented at trial, the jury could reasonably have found that Burton was a principal and that Hubbard was guilty of Count 19.

Based on the foregoing evidence, and viewing the evidence in the light most favorable to the prosecution, as we must, we have no difficulty finding that the State established a prima facie case as to each count, and the jury could reasonably have found the defendant guilty beyond a reasonable doubt of Counts 16-19. There is a strong presumption in favor of the jury's verdict, and this verdict does not present one of those extreme situations in which it is clear from the record that

the evidence against the accused was so lacking as to make the verdict wrong and unjust.

Conclusion

As explained above, the evidence, when viewed in the light most favorable to the State, was sufficient for the jury to determine that Hubbard was guilty of all but Count 5 of the charges in the indictment. We could easily envision fact situations, however, where it is not clear whether a person engaging in a transaction with a public official is a principal, and whether a person holding a position in a business outside its immediate leadership hierarchy is a principal. We can also envision that the legislature intended for the factual scenario outlined in Count 5 to be covered by the statute, but the definition of "employee" was inadequate to cover the specific facts of this case. Several of the 34 definitions in § 36-25-1, Ala. Code 1975, could be better defined by the legislature, and may be vague as to which persons, businesses, or acts fall within its scope.

In the present case, the evidence made it clear, and the jury found, that Hubbard's actions as alleged in Counts 6, 10, 16-19, and 23, were covered by the statute. However, not

every employee of every business, or every member of an organization that hires a lobbyist would be considered a principal. It could present a serious constitutional issue should a situation arise in which a public official is convicted for soliciting or receiving a thing of value from a person within an organization but outside its immediate leadership hierarchy, where it is not so clear that that individual is a principal. See, e.g., Johnson v. United States, ___ U.S. ___, ___, 135 S. Ct. 2551, 2557 (2015)("[T]he Government violates [due process] by taking away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.").

For these reasons, we strongly encourage the legislature to consider amending the law to better circumscribe the class of persons defined as principals, and to more clearly explain several of the other 34 definitions embodied in § 36-25-1, Ala. Code 1975, that could present similar constitutional issues. The language of Alabama's ethics law should be clear

as to which persons, businesses, and acts fall within its reach.

For all the foregoing reasons, we affirm the convictions and sentences on Counts 6, 10, 11-14, 16-19, and 23. We reverse and render a judgment on Count 5.

AFFIRMED IN PART; REVERSED AND JUDGMENT RENDERED IN PART.

Kellum and Burke, JJ., concur. Joiner, J., concurs specially. Windom, P.J., recuses herself.

CR-16-0012

JOINER, Judge, concurring specially.

The crux of Michael Gregory Hubbard's defense to many of the counts against him turns on the meaning of "pays full value" in § 36-25-1(34)b.9, Ala. Code 1975. The Court in the main opinion correctly applies this provision according to its plain meaning as being restricted to one who "give[s] money for a good or service that one buys," to one who "transfer[s] money that one owes to a person, company, etc.," or to one who "give[s] (someone) money for the job that he or she does; to compensate a person for his or her occupation." Black's Law Dictionary 1309 (10th ed. 2014). Because no evidence indicated that Hubbard's conduct met this definition, Hubbard was not entitled to have the jury instructed as to the full-value provision in § 36-25-1(34)b.9.

I fully concur in this Court's unanimous decision. I write separately to address various hypothetical situations that Hubbard posits in his reply brief. Hubbard writes:

> "Certainly one like Craftmaster--can be a 'recipient' of a thing of value if the thing it receives is money. Money--quite obviously an 'item of monetary value,' § 36-25-1(34)(a)[, Ala. Code 1975]--is the quintessential thing of value. One who receives it is, no doubt, a 'recipient' of a thing of value.

"And can one 'pay[] full value' for a thing of value, by trading stock shares for that thing of value? Of course one can. If you are selling your truck for $5000, and I give you (and you accept) stock shares worth $5000 for it, have I 'paid full value' for your truck? Of course I have. For that matter, if I give you (and you accept) $5000 worth of canned beans for your truck, have I 'paid full value' for your truck? Of course I have. Any reasonable user of the English language would understand this.

"And putting these two points together, any reasonable user of the English language when asked about facts like those in this case would understand:

> "Person A: First I want you to understand that the phrase 'thing of value' includes not only things like trucks, but things like stock, and also just plain money. Got it?
>
> "Person B: Got it.
>
> "A: OK, imagine I'm selling you some stock worth $5000, and you're going to give me $5000 for it. A completely fair price, we both agree. I'm not gouging you.
>
> "B: Got it.
>
> "A: What thing of value am I getting from you?
>
> "B: My money.
>
> "A: Right. Now I'm going to ask you an important question. Have I paid you full value for that thing of value, when I hand you the stock at the fair price? If I didn't, I'll probably go to jail.

> "Person B, if he or she is a reasonable user of English language, will always recognize that Person A did pay full value. Each side paid full value for the thing of value each received. That is why it was a fair transaction."

(Hubbard's reply, pp. 16-17.)

The problem with these hypothetical situations is that they all involve exchange, not payment as "payment" is commonly understood and as defined above. To illustrate this, I offer my own hypothetical: Suppose a person walked out of a local Montgomery business with $150,000 of goods or cash. Upon his arrest for shoplifting (or theft of currency), he offered the following defense: "I left stock certificates at the cash register."

No reasonable person would think that the individual had "paid" for the goods or cash. He might be understood as trying to impose a forced barter or exchange for them, but he has not "paid full value" as that term is commonly understood. The business is not required to deal on that individual's terms (although perhaps it could choose a different policy if it wanted to do so).

But to take the hypothetical a step further and closer to the case at hand: Suppose public officials were routinely

engaging in behavior like that described above--e.g., walking into a place of business owned by a lobbyist and leaving "stock certificates" in exchange for thousands of dollars in goods or cash--and that such behavior was often a cover for an improper attempt to influence the public official's behavior. Could the legislature, to promote public confidence in the integrity of government, require public officials to "pay full value" in such situations rather than "exchange" something in return? Of course it could. And that is exactly what it has done in the case of the paid-full-value exception from the definition of "thing of value" in § 36-25-1(34)b.9, Ala. Code 1975.

Hubbard's hypotheticals overlook the legislature's interest in enacting the ethics laws to "establish appropriate ethical standards with respect to the conduct of public officials and public employees" and to promote "public confidence in the integrity of government." § 36-25-2, Ala. Code 1975.[16] Here, the legislature--of which Hubbard was a

---

[16]Section 36-25-2 provides the legislative findings, declarations, and purpose of the ethics laws in Chapter 25 of Title 36, Ala. Code 1975. Section 36-25-2 provides, in part:

"(a) The Legislature hereby finds and declares:

"(1) It is essential to the proper operation of democratic government that public officials be independent and impartial.

"(2) Governmental decisions and policy should be made in the proper channels of the governmental structure.

"(3) No public office should be used for private gain other than the remuneration provided by law.

"(4) It is important that there be public confidence in the integrity of government.

"(5) The attainment of one or more of the ends set forth in this subsection is impaired whenever there exists a conflict of interest between the private interests of a public official or a public employee and the duties of the public official or public employee.

"(6) The public interest requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to the conduct of public officials and public employees in situations where conflicts exist.

"....

"(d) It is the policy and purpose of this chapter to implement these objectives of protecting the integrity of all governmental units of this state and of facilitating the service of qualified personnel by prescribing essential restrictions against conflicts of interest in public service

prominent member--used a precise term in § 36-25-1(34)b.9. It is clear and unambiguous.

---

without creating unnecessary barriers thereto."

Appendix C: Order of Supreme Court of Alabama denying rehearing

IN THE SUPREME COURT OF ALABAMA

August 28, 2020

1180047 Ex parte Michael Gregory Hubbard. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Michael Gregory Hubbard v. State of Alabama) (Lee Circuit Court: CC-14-565; Criminal Appeals : CR-16-0012).

CERTIFICATE OF JUDGMENT

WHEREAS, the ruling on the application for rehearing filed in this case and indicated below was entered in this cause on August 28, 2020:

Application Overruled. No Opinion. Parker, C.J. - Bolin, Wise, Bryan, Mendheim, and Stewart, JJ., concur. Sellers, J., dissents. Shaw and Mitchell, JJ., recuse themselves.

WHEREAS, the appeal in the above referenced cause has been duly submitted and considered by the Supreme Court of Alabama and the judgment indicated below was entered in this cause on April 10, 2020:

Affirmed In Part; Reversed In Part; Remanded. Parker, C.J. - Mendheim and Stewart, JJ., concur. Parker, C.J., concurs specially. Bolin, Wise, and Bryan, JJ., concur in part and concur in the result in part. Sellers, J., concurs in part and dissents in part. Shaw and Mitchell, JJ., recuse themselves.

NOW, THEREFORE, pursuant to Rule 41, Ala. R. App. P., IT IS HEREBY ORDERED that this Court's judgment in this cause is certified on this date. IT IS FURTHER ORDERED that, unless otherwise ordered by this Court or agreed upon by the parties, the costs of this cause are hereby taxed as provided by Rule 35, Ala. R. App. P.

I, Julia J. Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 28th day of August, 2020.

Julia Jordan Weller

Clerk, Supreme Court of Alabama

Appendix D: Statutes

Ala. Code § 36-25-1(34)b.10

(34) THING OF VALUE.
…
b. The term, thing of value, does not include any of the following, provided that no particular course of action is required as a condition to the receipt thereof:
…

10. Compensation and other benefits earned from a non-government employer, vendor, client, prospective employer, or other business relationship in the ordinary course of employment or non-governmental business activities under circumstances which make it clear that the thing is provided for reasons unrelated to the recipient's public service as a public official or public employee.

Ala. Code § 36-25-1.1

Lobbying

Lobbying includes promoting or attempting to influence the awarding of a grant or contract with any department or agency of the executive, legislative, or judicial branch of state government.

No member of the Legislature, for a fee, reward, or other compensation, in addition to that received in his or her official capacity, shall represent any person, firm, corporation, or other business entity before an executive department or agency.

Ala. Code § 36-25-5(a), (c)

Use of official position or office for personal gain.

(a) No public official or public employee shall use or cause to be used his or her official position or office to obtain personal gain for himself or herself, or family member of the public employee or family member of the public official, or any business with which the person is associated unless the use and gain are otherwise specifically authorized by law. Personal gain is achieved when the public official, public employee, or a family member thereof receives, obtains,

exerts control over, or otherwise converts to personal use the object constituting such personal gain.

…

(c) No public official or public employee shall use or cause to be used equipment, facilities, time, materials, human labor, or other public property under his or her discretion or control for the private benefit or business benefit of the public official, public employee, any other person, or principal campaign committee as defined in Section 17-22A-2, which would materially affect his or her financial interest, except as otherwise provided by law or as provided pursuant to a lawful employment agreement regulated by agency policy. Provided, however, nothing in this subsection shall be deemed to limit or otherwise prohibit communication between public officials or public employees and eleemosynary or membership organizations or such organizations communicating with public officials or public employees.

Ala. Code § 36-25-5.1(a)

Limitation on actions of lobbyists, subordinates of lobbyists, and principals.

(a) No lobbyist, subordinate of a lobbyist, or principal shall offer or provide a thing of value to a public employee or public official or to a family member of the public employee or family member of the public official; and no public employee or public official or family member of the public employee or family member of the public official shall solicit or receive a thing of value from a lobbyist, subordinate of a lobbyist, or principal. Notwithstanding the foregoing, a lobbyist, or principal may offer or provide and a public official, public employee, or candidate may solicit or receive items of de minimis value.

…

Ala. Code § 36-25-7(b)

Offering, soliciting, or receiving anything for purpose of influencing official action; money solicited or received in addition to that received in official capacity.

…

(b) No public official or public employee shall solicit or receive anything for himself or herself or for a family member of the public employee or family member of the public official for the purpose of corruptly influencing official

action, regardless of whether or not the thing solicited or received is a thing of value.