NO. 18-3390

22-5541

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

EDWIN PAWLOWSKI

PETITIONER

Vs.

UNITED STATES OF AMERICA

RESPONDENT

ON PETITION FOR A WRIT OF CENTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

On Appeal from Jugment in the United States District Court for the Eastern District of Pennsylvania No. 5:17-cr-00390-001 (Sanchez, J.)

Edwin Pawlowski
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QUESTIONS PRESENTED TO THE COURT

Argument One

- Did the Trial Court error by improperly restricting the Defendant's right to re-cross examination in light of new matter and evidence presented by the Prosecution during redirect and deny the Defendant the Constitutional Right to Compulsory Process of a key Government witness under the Sixth Amendment?

- Did the Third Circuit Court of Appeals decide on important federal questions in a way that conflicts with it's own case law and relevant decisions of the Supreme Court?

- Should an Appellate Court be required to conduct a through harmless error tests on significant issues of impact during a trial proceeding so as not to confine judicial review to a single individual, thus insuring a just review for a criminal defendant?

- Was the effect of the error and continuous denials during re-cross examination so cumulative as to impose structural error on the proceedings and impact the entirety of the judicial process?

QUESTIONS PRESENTED TO THE COURT (CONTINUED)

Argument Two

- Did the Government fail to meet the standards necessary for Campaign Contribution Quid Pro Quo and/or "official action" standard?

- Was the decision by the Third Circuit Court of Appeals in conflict with that of other circuit courts and the Supreme Court regarding an important matter of the law as it relates to Federal Campaign Contribution and the First Amendment?

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Confrontation and Cumpulsory Process denial under the Sixth Amendment of the Constitution.

- The role of campaign contributions in our system of privately financed elections under the First Amendment.

STATEMENT OF JURISDICTION

This is an appeal to the Supreme Court of the United States for a petition for Writ of Certiorari under 28 U.S.C. §1254(1).

The United States Court of Appeals for the Third Circuit decided this case and entered judgment on March 4, 2022. A timely petition for En Banc rehearing was submitted on April25,2022 and was denied by the Third Circuit Court of Appeals on June 6, 2022.

This petition raises important constitutional issues and conflict of law related to the conviction and finding of guilt of the Appellant and is thus submitted to this Honorable Court for review.

STATEMENT OF THE CASE

On July 25, 2017, Edwin Pawlowski was indicted for the conduct related to soliciting campaign contributions for various political elections in return for Government contracts or favorable Government treatment. Mr. Pawlowski was charged with fifthy-five counts: 18 U.S.C. §371, 18 U.S.C. §1952 (three counts), 18 U.S.C. §666 (a)(1)(b) (fourteen counts), 18 U.S.C. §666 (a)(2), 18 U.S.C. §1341 (nine counts), 18 U.S.C. 1343 (nine counts), 18 U.S.C. §1346 (two counts), 18 U.S.C. §1343 (six counts), 18 U.S.C. §1951 (three counts), 18 U.S.C. §1001 and 18 U.S.C. §2.

On March 2, 2018, a jury sitting in the Federal District Court for the Eastern District of Pennsylvania found Mr. Pawlowski guilty of counts 1, 4-6, 8, 10-15, 18, 20-22, 26-28 and 29-55. The jury found Mr. Pawlowski not guilty of counts 2, 3, 7, 9, and 23-25.

On October 22, 2018, the trial court granted Mr. Pawlowski's Rule 29 motion as to counts 11, 12, 13 and 14. On November 6, 2018, the Government filed a motion, granted by the court, to dismiss counts 29, 31-32 and 38-39.

On October 23, 2018, Judge Juan Sanchez sentenced Mr. Pawlowski on the remaining counts to 180 months, supervised released of three years and restitution in the amount of $93,749.00. On October 25, 2018, a timely Notice of Appeal was filed.

On March 4, 2022, the Panel of Ambro, Krause and Bibas, Circuit Judges, issued an opinion affirming the judgment of the District Court.

On April 25, 2022, Mr. Pawlowski petitioned for an En Banc rehearing pursuant Rules of Appellate Procedure 35 and 40. On June 6, 2022, the petition was denied. Mr. Pawlowski now petitions the Supreme Court for Writ of Certiorari.

Factual History

Appellant Edwin Pawlowski was the elected Mayor of Allentown, Pennsylvania. Mr. Pawlowski was first elected Mayor in 2006 and served as Mayor until his resignation, post incarceration, in this instant case in March of 2018. Mr. Pawlowski had a campaign fund for his mayoral elections (Friends of Ed Pawlowski).

On September 8, 2013, Mr. Pawlowski announced his run for Governor of Pennsylvania and set up a campaign fund for the endeavor (Pawlowski for Governor). After a period of time and unable to raise the required financing, Mr. Pawlowski withdrew from the Governor's race on February 3, 2014.

On April 17, 2015, Mr. Pawlowski announced his intention to run for the United States Senate from Pennsylvania and set up a campaign fund for this purpose (Pawlowski 2016).

In July of 2015 the Federal Bureau of Investigations (FBI) search Allentown City Hall and shortly after that, Mr. Pawlowski withdrew from the Senate race.

It is during these campaigns for Governor and Senate that Mr. Pawlowski was convicted of obtaining campaign contributions for contracts and favors.

ARGUMENT ONE

After taking pieces for my special order table from the box and laying them out before me, I noticed something wasn't quite right. The beautiful top for the table and other parts were accounted for, but it was missing one of the legs. Without all of the legs, I couldn't assemble the table, it would collapse, rendering it useless.

It is not just tables that are rendered useless when missing a vital piece. Binding precedents outlined in the Constitution regarding Confrontation and the Compulsory Process are essential pieces which form the foundation of a fair trial. They are the legs, if you will, on which proper judicial review rests. They are so fundamental and essential, that if taken away, the goal of Constitutional fairness collapses Pointer v. Texas, 380 U.S. 400, 13 L. Ed. 923 85 S. Ct. 1065 (1965).

Both of these specific and definitive rights were denied the defendant by the Trial Court.

" The Constitution guarantees criminal defendant's a meaningful opportunity to present a complete defense" Crane v. Kentucky, 476 U.S. 683, 690, 106 S. Ct. 2528, 81 L. Ed. 2d 413 (1986) quoting California v. Trambetta, 467 U.S. 479, 485 104 S. Ct. 2528, 81 L. Ed. 2d 413 (1984). This opportunity as the Court will see was withheld from the defense in this case. The Trial Court's categorical denial of re-cross examination throughout the trial and of a key Government witness allowed new testimony, evidence and matter to go unchallenged, thus critically damaging the defense's argument to the jury.

There is a long line of cases and binding precedents for which the Supreme Court has articulated regarding the rights of the accused to confront a witness and compel testimony for cross examination; Rock v. Arkansas, 483, U.S. 44, 97 L. Ed. 2d 37, 107 SCT 2704 (1987), Delaware v. Van Arsdall, 475 U.S. 673, 89 L. Ed. 2d 674, 106 SCT 1431 (1986), Davis v. Alaska, 415 U.S. 308, 318, 39 L. Ed. 2d 347, 94 S. Ct. 1105 (1974), Smith v. Illinois, 390 U.S. 129, 131, 19 L. Ed. 2d 956, 88 S. Ct. 748 (1968), Douglas v. Texas, 380 U.S. 415, 418, 13 L. Ed. 2d 934, 85 S. Ct. 1074 (1965), Pointer v. Texas, 380 U.S. 400 13 L. Ed. 2d 923, 85 SCT 1065 (1965), Green v. McElroy, 360 U.S. 474, 496, 3 L. Ed. 2d 1377, 79 S. Ct. 1400 (1959).

While there is a presumption that the rulings of the Court regarding cross examination encompass stare decisis for cases involving redirect, the Supreme Court has decided few cases specifically encompassing the issue of re-cross examination. This has left an opening for the lower courts to apply or deny Constitutional principles and decide important questions of law without guidance from the Higher Court, guidance, which now conflicts among the judicial circuits Alford v. United States, 282 U.S. 687, 694, 75 L. Ed. 624, 51 S. Ct. 218 (1931); Smith v. Illinois, 390 U.S 129, 88 S. Ct. 748, 19 L. Ed. 2d 956 (1967).

It is critically important to the judicial process and to the public, that this Honorable Court provide principles of settlement regarding re-cross examination to bring judicial review inline with Constitutional Rights and to clearly articulate the basis for a court's abuse of discretion. Thus is the aim of the questions regarding re-cross being proposed for Centiorari.

During a six week trial beginning on January 16, 2018, the trial court on numerous occasions allowed the prosecution to present new evidence and matter during re-cross examination which went unchallenged to the jury. The violations were so cumulative and severe they can be considered in essence a blanket denial of re-cross for the defense on new matter during the entirety of the proceedings.

The trial court consistently and improperly denied the defense impeachment of witnesses on new matter for bias, a direct contradiction to the Confrontation Clause of the Sixth Amendment of the Constitution Davis v. Alaska, 415 U.S. 308, 39 L. Ed. 2d 347, 94 SCT 1105 (1974).

As Justice Black stated in Pointer v. Texas, "there are few subjects, perhaps, upon which the Court and other Courts have been more nearly unanimous than in their expressions of belief that the right of confrontation and cross examination is an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal."

Both of these rights were denied the defendant by the trial court in connection with the testimony of the Government's key cooperating witness Sam Ruchlewicz. Mr. Ruchlewicz was a campaign worker/consultant during the defendant's term as Mayor of Allentown, his run for Governor of Pennsylvania and his subsequent run for the United States Senate. Mr. Ruchlewicz was employed by another cooperating witness, Mr. Mike Fleck (who was not called by the Government to testify). Mr. Fleck's firm, H Street Strategies was engaged in political consulting and political fundraising. The firm also took on private clients to consult and lobby for them in the hopes of obtaining government business.

The Federal Bureau of Investigations (FBI) confronted Mr. Ruchlewicz in June of 2014 in San Francisco about money he had stolen from the Allentown Futures Fund PAC (Jury Trial 2/1/18, page 186, lines 17-20 through page 187, lines 3-4). Mr. Ruchlewicz immediately agreed to cooperate and to wear a body wire on a daily basis in his contact with Mr. Fleck, the defendant and others. (Exhibit A: Trial Transcript 2/1/18, pages 173 to 187)

Mr. Fleck and Mr. Ruchlewicz were being investigated prior to this San Francisco confrontation by the FBI. The FBI used undercover agents and tape recordings in this investigation of Mr. Fleck and Mr. Ruchlewicz. It was in essence an operation to determine Mr. Fleck's and Mr. Ruchlewicz's involvement in using their political connections to assist their private clients. A corollary to this operation was to see what politicians, if any, were involved with Fleck and Ruchlewicz in using their offices to assist private businesses.

The operation involved setting up a bar/resturant and investing in property, with an FBI agent posing as a potential client for H Street Strategies to determine if there was any corruption in the process by Mr. Fleck and Mr. Ruchlewicz with any of their political connections in the area. The testimony of FBI Agent Scott Curtis and his affidavit to obtain warrants demontrated loan and mail fraud were believed to be occurring. (Exhibit B: Trial Transcript, 1/29/18, Pages 215 to 216)

During the trial cross examination by the defense counsel, it was elicited both from Mr. Ruchlewicz and Agent Curtis that during the fraudulent scheme, Mr. Fleck, with Mr. Ruchlewicz present and remarking during the conversation, stated very exculpatory statements on tape about the defendant including:

1. Mayor is not greedy - don't have to give him a dime if it's the right thing to do.
Ruchlewicz Cross - Jury Trial, 2/6/18; page 88, lines 11-15, and page 89, line 1)

2. You're not going to get strong armed like Mayor Nutter.
(Ruchlewicz Cross - Jury Trial, 2/6/18; page 90, lines 7-24)

3. Don't talk about bribes at all or the Mayor will go nuts.
(Ruchlewicz Cross - Jury Trial, 2/6/18; page 91, lines 20-22)
(Agent Curtis - Jury Trial, 1/29/18; page 215, lines 10-21)

4. Mayor is a straight as they come.
(Ruchlewicz Cross - Jury Trial, 2/6/18; page 91, line 23)
(Agent Curtis - Jury Trial, 1/29/18; page 215, lines 22-25)

5. Not many people in politics like the Mayor.
(Ruchlewicz Cross - Jury Trial, 2/6/18; page 92, lines 24-25; page 93, lines 1-4)

6. What is good for the city, not him, is the way he operates.
(Ruchlewicz Cross - Jury Trial, 2/6/18; page 92, lines 14-19)
(Agent Curtis - Jury Trial, 1/29/18; page 216, lines 1-5)

7. No, seriously, don't even -- you know, we're talking candidly here. Don't even talk about that stuff with the mayor.
(Ruchlewicz Cross - Jury Trial, 2/6/18; page 91, lines 19-21)

Mr. Ruchlewicz further went onto testify to the following.

> Q: And that's what Mr. Fleck was, in fact, not knowing -- any of you knowing you were being taped. He was telling him these things about the man who's on trial here today, correct?
> A: That's Correct.
> (Ruchlewicz Cross - Jury Trial, 2/6/18; page 93, lines 5-9)
> (Exhibit C: Jury Trial Transcript, 2/6/18, pages 89-93)

Since this obviously powerful exculpatory evidence, the Government during redirect attempted to diffuse this testimony by introducing new matter and evidence to the jury as well as the defense in the hopes of neutralizing these statements. Prosecution argued that the statements were offered not because they were true, but because there was a lack of trust in the individuals they were talking to. (Exhibit D: Jury Trial Transcripts, 2/7/18; pages 235 - 272)

Before the Government pursued this approach, there were numerous days of testimony which the trial court allowed procedural errors to occur throughout the redirect process which were favorable to the prosecution.

The first of several such errors occurred on January 30, 2018 in which the defendant's counsel (Mr. McMahon) challenges the trial court judge on new matter and evidence presented by the prosecution during redirect.

> Mr. McMahon: But she introduced new evidence about phone calls that my client supposedly made. That was not -- she introduced new evidence and new exhibits. And if I can't cross examine on new evidence and new exhibits, than what are we doing here?
>
> The Court: All right, so again, you raised the -- you've challenged the --
>
> Mr. McMahon: I did, but she's introduced new evidence.
>
> The Court: It doesn't matter. She used the affidavits that she had --
>
> Mr. McMahon: Then, there's no such thing as --
>
> The Court: -- that you had. She -- right, that --
>
> Mr. McMahon: She introduced a different section judge.
>
> The Court: So what? It was in response to what you brought out on direct [sir]. That doesn't entitle you --
>
> Mr. McMahon: But I have a right to cross examine about it.
>
> The Court: All right.
>
> Mr. McMahon: She introduced new evidence.
>
> The Court: I don't think you have --
>
> Mr. McMahon: New evidence.
>
> The Court: Sorry, I don't think you have -- you haven't convinced me that she brought out anything on redirect examination.
>
> Mr. McMahon: She brought out new evidence and new exhibits and you're denying me the right to cross examine on new evidence and exhibits. That's --
>
> The Court: Okay.

Mr. McMahon: --that's terrible.

The Court: All right, you can take it up on appeal.

Mr. McMahon: Well, that is clear.

The Court: Anything else?

Mr. McMahon: Based on that, I guess I have no other questions your honor.

(Agent Curtis Re-Cross - Jury Trial, 1/30/18: page 57, line 18 through page 59, line 4)

There were numerous additional errors and exchanges like the previous which are not mention here but none the less occurred during redirect and are part of the court record. All this was a precursor to the re-cross examination which began on February 7, 2018 of the Government's main witness and informant in this case, Sam Ruchlewicz.

Before redirect, the counsel for the defense requested a side bar discussion with the judge after the mid day recess.

Mr. McMahon: Can we see you at side bar one second before we start?

The Court: All right.

The Court (Indiscernible, fight?)

Mr. McMahon: No

The Court: I'm going to start bringing boxing gloves and let you guys settle it that way.

Mr. McMahon: Love is in the air, Judge. Love is in the air.

The Court: So What?

Mr. McMahon: Judge, rather than -- and I just want to make sure that we're all on the same page here. They -- I know this is redirect examination.

The Court: Right.

Mr. McMahon: I don't want to object every -- if it's repetitive or without. I'm just making it aware that the Court controls the extent and scope of the redirect examination

since I don't get re-cross examination in this courtroom.

The Court: All right.

Mr. McMahon: So -- but --

The Court: Well, I mean, I think that attorney Wzorek and attorney Morgan understands the role of redirect. It's within the scope of the cross, and the redirect is not to be direct testimony. It's to explain anything that you brought out in the cross examination.

Mr. McMahon: Okay. I just -- I understand.

The Court: I think they're playing by the rules.

Mr. McMahon: I -- you can agree or disagree Judge.

The Court: All right.

Mr. McMahon: I think the scope of the redirect examination has been way more expansive. In light of fact, too, that we get no re-cross examination, it makes -- it truly --

The Court: No, I disagree.

Mr. McMahon: Well, that's why we have courthouses.

The Court: Right, that's what you are all suppose to say.

(Ruchlewicz Recross - Jury Trial 2/7/18; page 182, line 24 through page 184, line 11)

This discussion proceeded the re-cross of Mr. Ruchlewicz by the prosecution.

Later the same day the following line of questioning ensued.

Q: Mr. McMahon played a tape for you sometime yesterday afternoon, I believe it was, from August 28th of 2013, between Mr. Fleck and the undercover agent. Do you remember that?

A: Yes

Q: First of all, August 28th of 2013, was that early, in the middle, or late in your communication with this undercover operative?

A: It was very early, sir.

Mr. McMahon: No, it wasn't.

Q: When you heard Mr. Fleck say, you don't have to give the mayor a dime, did you trust the undercover operator at that point?

A: No

(Ruchlewicz recross - Jury Trial- 2/7/18: page 235, 11-23)

After this exchange numerous new matters were introduced and the witness was questioned to the objection of the defense counsel. (Exhibit D: Ruchlewicz Re-cross - Jury Transcripts - 2/7/18: pages 236-252)

Another side bar discussion the ensued on the new evidence in which the defense counsel challenged the Court once again on the ability to confront the witness on the new exhibits and matter that was presented to the jury, excerpts are as follows.

> The Court: -- The witness. Because if I understand it correctly, this exhibit was introduced in response to your challenge that there were no tapes, okay?
>
> Mr. McMahon: I don't doubt that's why it was -- the purpose of it being introduced does not change the constitutional right to confront witnesses against you. The fact that their purpose was correct in their re-cross -- redirect examination, I agree. That's perfectly proper redirect. But they've introduced new evidence. The defendant has a right, and this is the third time. We've had two other times where --
>
> The Court: All right.
>
> Mr. McMahon: -- they've introduced evidence and I've not been allowed. But this is a direct violation of confrontation. It's not a question of discretion of the court. This is confrontation. This is new evidence that I am being prohibited from cross examining on. That's not right. This is new evidence. It's a new exhibit, it's a new mark, new playing, and the defendant always has a right to cross examine new evidence that's presented. And if he's not, he's being denied his constitutional right to confrontation. That's -- and there's other evidence of new evidence.
>
> The Court: Let me hear your response.
>
> Mr. Wzorek: Judge, it's not new evidence. Mr. McMahon had this available to him. It's part of the discovery in this case. If he wanted to use it, he could've used it in the cross examination.
> (Trial Side Bar - Jury Trial - 2/7/18; page 256, line 7 through page 257, line 9)

Than later in the side bar discussion.

> The Court: This is what I'm going to do. You -- it's ten minutes to. I'm going to just -- I'm going to hear all these arguments as to why you believe you are entitled to a re-

cross examination, and you could put all your arguments on the record. I want to have the Government put their arguments on these points on the record. And you'll have them available tomorrow.

Mr. Wzorek: We will, Your Honor.

The Court: And if I decide that I'm not going to allow a re-cross examination of the witness, you will move on --

Mr. Wzorek: Can I just tell the witness that he may or may not testify tomorrow?

The Court: Yes. You -- tell him that he may not testify.

(Trial Side Bar -- Jury Trial - 2/7/18; page 258, lines 13 through page 259, line 1)

At this point the trial court judge had seemed to already made up his mind regarding re-cross examination of the witness in allowing him to be sent home. The defense pleaded with the Court and presented eight areas where new evidence, matter or testimony was produced and for which re-cross examination was required.

(Trail Side Bar -- Jury Trial - 2/7/18; page 262, line 12 through page 270, line 15)

The Court than proceeded to further question the defense counsel for which they responded.

Mr. McMahon: This is a -- my point is this, Judge. On this new evidence, and I know it's in your discretion and all that. I understand the rules, and I understand that. But there is some case law, new evidence and confrontation issues. But what do we -- what's wrong with getting more questions to the truth? A limited cross to ask this witness on, probably take 15 minutes, when we're talking about a matter of this significances. I don't understand why we -- I think discretion should be exercised in the area of more information because more information leads to better justice.

The Court: I appreciate just your statement. If you would promise me that you will take 15 minutes maybe I will --

Mr. McMahon: I will --

The Court: I will exercise my discretion and allow --

Mr. McMahon: I got you.

The Court: -- some re-cross examination. But I'm not going to have another --

Mr. McMahon: Believe me, I don't want to and don't intend to.

The Court: All right.

(Trial Side Bar -- Jury Trial - 2/7/18; page 271, lines 25 through page 272, line 22)

The issue of re-cross seemed to be resolved but the Judge than asks for a response from the prosecution. (Trial Side Bar -- Jury Trial - 2/7/18; page 272, lines 23 through page 279, line 10)

The defense made one last appeal to the trial Court.

The Court: You keep saying new evidence, This is --

The Court: -- but --

Mr. McMahon: It's a fact. I mean, so -- in no universe, in no universe is when they've introduced new evidence in front of the people deciding this case is that not new evidence. What universe is that not new evidence?

The Court: Do you have case law, if you have case law I will

Mr. McMahon: I'll look it up, Judge. but I --

The Court: -- I will happily look at it.

Mr. McMahon: But I mean, just fundamental fairness, new evidence in front of the jury. There's no prejudice to getting to the truth, no I don't know we're limiting ourselves to

The Court: McMahon, you have case law, I will take a look at it and I'll consider, and I'll give you a final ruling in the morning, okay?

Mr. McMahon: Yes, Your Honor.

The Court: We'll stand in recess. I'll be here at eight o'clock. So you have case law.

Mr. McMahon: Naturally.

A letter was submitted to the Court with case law outlining the areas to be cross examined with the Government witness. (Exhibit E: Motion filed 2/9/18, docket entry 107 and response from the Trial Judge)

The next morning, the Judge after stating he would allow the defense to question the Government's witness on the previous day, denied the request to re-cross by the defense. The defense than stated on the record it would move for a mistial. (Exhibit F: Trial transcript, 2/8/18, pages 1 to 5)

Several days later on February 15, 2018, after again being denied re-cross examination of the key witness (Dale Wiles redirect- Jury Trial - 2/15/18; page 84, line 20 to page 87, line 13) and not being allowed to present new evidence even on direct examination of recordings withheld from the jury, the defense counsel called for a mistrial on the record. (Exhibit G: Agent Curtis Direct - Jury Trial - 2/15/18; page 197, line 6 to page 202, line 21)

The error continued and on February 20, 2018, during redirect with Agent Curtis, the defense asked why the Government did not retain or have any emails from Mr. Fleck or Mr. Ruchlewicz past their cooperation period. (Exhibit G: Agent Curtis Redirect - Jury Trial - 2/20/18; page 10, line 10 through page 12, line 20)

There were indeed additional emails not provided to the defense. Several even related to Mr. Fleck's and Mr. Ruchlewicz's knowledge of the individuals (undercover agents) they met in Philadelphia. But the defense was not allowed to present this evidence or challenge the credibility or the bias of the witness since the court denied compulsory process and confrontation by <u>not</u> allowing the Government's key witness (Mr. Ruchlewicz) to be called for further questioning during direct by the defense. The damage was done and the jury was left with an entirely false impression of key exculpatory evidence, new matter and new evidence which was left unchallenged, thus denying the defendant a complete and rightful defense.

In United States v. Mussare, 405 F. 3d 161 (3rd Cir. 2005), the Court stated, "The Confrontation Clause guarantees the right of a criminal defendant to confront witnesses for the purpose of cross examination, and an important part of the cross examination is the exposure of the witness for bias or motivation for testifying." The Defendant in this case was denied this right.

In United States v. Riggi, 951 F. 2d 1368 (3rd Cir. 1992), this exact issue was addressed and the Third Circuit Court's analysis clearly supports the appellant's reversible error claim.

In Riggi, a key prosecution witness for the first time brought out new matter against Mr. Riggi on redirect examination and the defense's counsel was denied re-cross examination. The result as stated by the Appellate Court was reversible error.

In this instant case, which is indistinguishable from Riggi, a key witness for the prosecution for the first time on redirect gave damaging evidence against the appellant and the defense counsel, like in Riggi, was denied cross examination of the evidence and matter. This, as in Riggi, reversible error should clearly follow.

This principle was recently strengthened by a recent Third Circuit ruling in United States v. Calloway, No. 20-1124 (April 1, 2022) which stated, "The Confrontation Clause also guarantees the right to re-cross when material new matters are brought out on redirect examination. Thus, a district court abuses its discretion when it prohibits all re-cross and does not allow re-cross on new matters raised on redirect."

The First Circuit in United States v. Honneus, 508 F. 2d 566 (1970) addressed a similar issue. The Court reasoned that the "federal" rule regarding re-cross examinations even in it's most draconian form, does not deny to a cross examiner reasonable latitude to inquire into relevant matters that may show a witnesses bias or prejudice or otherwise impeach his credibility. Alford v. United States, 282 U.S. 687, 51 S. Ct. 218, 75 L. Ed. 624 (1931); Smith v. Illinois, 390 U.S. 129, 88 S. Ct. 748, 19 L. Ed. 2d 956 (1967)

The trial court's ruling and continuous denial of redirect, denied the defendant the right to cross examine and confront the Government's witness on critical new matter. If the jury were to believe statements were made because they were the truth, that would be extremely helpful to acquitting the defendant. If on the other hand, the jury believed they were not true and put forth by the proclaimer due to lack of trust, than that would help the Government immensely in their arguments for conviction.

This critical new evidence and matter was not subject to any cross examination at all. It was left out there for the jury as a fact presented by the Government with absolutely no confrontation of its validity by the defense. The Confrontation Clause of the United States Constitution was enacted so no such thing could ever happen in a fair criminal process. The ability to confront Mr. Ruchlewicz on this and other important new issues was absolutely necessary to a fair proceeding. How could a fair trial be achieved if the Government is free to present new evidence and matter that negates powerful exculpatory evidence without the defense having an ability to challenge? This runs totally contra to the spirit and purpose of the Confrontation Clause outlined by the founding fathers and is simply a shocking elimination of one's ability to a fair defense. Ironically, the trial court states there is no prejudice to the defendant. Nothing could be further

from the truth. Not being able to cross examine a witness on such critical issues is the very definition of prejudice.

The importance of this issue in the context of this case cannot be understated. The defense in it's opening statement started with those exact exculatory statements by the Appellant. It was the central theme of the entire defense, i.e., when Mr. Ruchlewicz and Mr. Fleck were not cooperating, these taped words demonstrated the defendant as a totally honest individual devoid of any corrupt practice. The Government sought to undermine this concept and on redirect, found their opportunity by showing that these were not accurate or true statements, but were made out of lack of trust of the people they were speaking to. This was the only reason the Government asked these questions. Not allowing cross examination to test the truthfulness of this new assertion is simply a shocking elimination of the Appellant's Sixth Amendment right to confrontation.

This denial of a fundamental and constitutional right was exacerbated by the trial court's denial of the defense's request to call a witness (Mr. Ruchlewicz) on direct in it's own case. The defendant, in the alternative, requested the Government to make Mr. Ruchlewicz available for the case in chief (see page 4 of trial motion in Exhibit E). Compulsory process required that the witness be produced by the Government so the defense could address the items elicited on redirect examination. This right, also explicit in the Constitution was also denied by the Trial Court.

The new matter brought up by the Government during redirect was not only limited to the area of "trust" by Mr. Ruchlewicz in the undercover agents, but also included numerous additional matters and new evidence brought to light for the first time in redirect of a witness which encompassed sixthy

eight pages of transcripts that included numerous new exhibits and areas of examination (Ruchlewicz Redirect- Jury Trial - 2/7/18, pages 184-252). Counsel for the defense provided the trial court specific areas of new matter, exhibits and evidence that were presented to the jury by the prosecution, that it wished to further cross examine Mr. Ruchlewicz. The request, due to time limitations imposed by the judge, were limited to eight specific areas which are as follows:

1. New conversation SR 27601
2. Testimony Re: Witness conversation post FBI raid with defendant.
3. Testimony Re: New explanation by witness of his reasons for cooperation.
4. Testimony Re: New testimony on business phones.
5. New exhibit and testimony on Basin Street Project.
6. Previously discussed issue regarding "lack of trust" testimony.
7. New exhibit regarding Matt McTish, April 27, 2015 meeting.
8. New exhibits SR 402 at 1101 re: Mark Neiser.

(Ruchlewicz Redirect - Jury Trial - 2/7/18; pages 263- 270)

If re-cross was allowed on these above issues, the defense would have been able to thoroughly develop testimonial inconsistencies and implausibilities identified during the prosecutions redirect. Mr. Ruchlewicz, would have been shown to have lied to the jury regarding his knowledge of the FBI undercover agents identity. A fact which was proven in a podcast interview conducted after the trial with then retired FBI Agent Scott Curtis. In the podcast interview, Agent Curtis confirms this fact when he states, "They had no direct knowledge at this point that law enforcement had an active investigation." (Exhibit H: Podcast, May 2, 2019, Jerri Williams, Episode 164) A full and complete questioning of the witness by the defense would have revealed this fact to the jury.

A complete interrogation of Mr. Ruchlewicz on re-cross would have also shown that he deceived the court regarding his intentions for cooperating with the FBI. Defense would have clearly shown that Mr. Ruchlewicz's cooperation was motivated entirely by fear of prosecution for theft of campaign funds, and not some existential conviction to "do the right thing". These two matters, if re-cross were allowed, would have severely discredited this witness to the jury, thus negating and calling into question his entire three days of testimony against the defendant.

Furthermore the defense would have shown the jury that the conversation in SR 27601 presented by the prosecution during redirect was irrelevant to any discussion of contracts with the Norris McLaughlin law firm. It would have gone on to demonstrate that the jury was misled by the prosecution multiple times when discussing contracts and donors. Defense would have shown that the language used in the April 27th meeting with Matt McTish was the same language used by the defendant in every meeting he had with donors -- his pitch, to help support funding for the State's ailing bridges and roads with no reference to any city contracts or business.

The defense would also have been able to challenge the prosecutions questions relating to contractors who felt they were in a pay to play relationship with the defendant by pointing to Mr. Ruchlewicz's own words in prior testimony.

In addition, the defense was ready to bring out evidence that would have shown the jury that the use of the word "burner phones" by Ruchlewicz and Fleck was common and only referred to pre-paid cellular phones. It was language that was used by them with all of their political clients with no nefarious meaning.

If the defense was able to challenge Agent Curtis's remarks on redirect, it would have shown that his statements regarding the defendant's involvment and direction in Fleck and Ruchlewicz's schemes were untrue and that the defendant had no idea of the activities taking place behind his back. The defense would have also interrogated Agent Curtis on his response (or lack thereof) to Mike Flek's conversation with his staff where he discussed the FBI wanting to "set up the mayor" and why the agent never documented this conversation in his records or any follow-up discussions with Mr. Fleck.

Finally, if the jury was allowed to view a letter that was sent to the prosecution by the defense which stated that the Government's collaborator Mike Fleck stole $76,000 in federal campaign funds from the defendant while under FBI supervision (Exhibit I: Letter to U.S. Attorney on theft of Federal Campaign funds). This would have cast significant doubt in the jury's mind on the entirety of the investigation and evidence, thus causing incalculable doubt in the jurors minds.

The Government's primary objection to the trial court for not allowing these issues and evidence to be cross examined is simply that it might take too long and the jury may have to stay longer than originally estimated by the Court (Jury Trial - 2/7/18; page 280, lines 1-9). Nowhere in the Constitution is it stated or has any court decided that the fundamental right of confrontation be discarded due to lack of time. Fairness and justice are not subject to a shot clock or time analysis under our nation's laws.

The Trial Court further exacerbated the error by stating that the reason for denial of re-cross was that the information had been provided in discovery, which is totally irrelevant. A new matter brought forth in redirect has nothing to do with whether something has been turned over in discovery.

The new evidence or matter discussed by the court in Riggi and Calloway is simply whether the evidence is new to the jury. The fact that counsel has discovery on the matter in a file somewhere has absolutely nothing to do with the correct analysis of the issue.

In the District Court's Order of Denial (Exhibit E), the Court qoutes Harsco v. Zlotnicki, 779 F. 2d 906 (3rd Cir. 1985). The District Court fails to understand the importance of the defense's assertions and misinterprets the law outlined in the case. Unlike in Harsco v. Zlotnicki, where the plaintiff was trying to present new evidence that was not available when the court granted it's motion for summary judgment, but attempting to show manifest error, the issue here, as in Riggi was addressing new matters and exhibits which arose for the first time during re-cross examination and the consistent denial of confrontation rights under the Sixth Amendment of the Constitution.

Furthermore, the District Court also placed emphasis on the redirect being proper to rebut or explain cross examination. The defense never contended that the prosecution's redirect was improper, but that the new evidence and matter were raised in front of the jury without any ability by the defense counsel to interrogate the witness on the credibility of the matter and responses presented. Even the most simplistic and basic analysis of the testimony reveals new evidence and matter was brought out in front of the jury during the Government's redirect. Again in Riggi, the Court sums up the appellant's position when it states; "it is well settled that if a new matter to be subject to examination, the District Court must allow the new matter to be subject to re-cross examination. Where new evidence is opened up during redirect examination, the opposing party must be given

the right of cross examination on the new matter, but the privilege of re-cross examination as to matters not covered on redirect examination lies within the trial court's discretion." In this case the judge's discretion was to totally deny re-cross by the defense, distorting the judicial process.

The Supreme Court in United States v. Stoeher, 196 F. 2d 276, 280 (3rd Cir.) cert denied, 344 U.S. 826, 73 S. Ct. 28, 97 Ed. 643 (1952); " Re-cross is to redirect as cross examination is to direct. To allow redirect examination on new material but deny re-cross on the same material is to violate both the Confrontation Clause and fundamental principles of fairness. It is well established that the Sixth Amendment Confrontation Clause encompasses the fundamental right of cross examination." see, eg. Smith v. Illinois, 390 U.S. 129, 131, 88 S. Ct. 748, 749, 19 L. Ed. 2d 956 (1968).

Cross examination is the principle means by which the trustworthiness of a witness is tested Davis v. Alaska. So essential is cross examination to this purpose that the absence of proper confrontation "calls into question the ultimate integrity of the fact finding process" Ohio v. Roberts, 488 U.S. 56 100 S. Ct. 2531, 65 L. Ed. 2d 597 (1980).

The courts have well established case law underlying the right of cross examination and that it applies with equal strength to re-cross when new matter is brought out on redirect. "Where, as here, new matter is brought out on redirect examination, the defendant's first opportunity to test the truthfulness, accuracy, and completeness of the testimony is on re-cross examination. To deny re-cross examination on matter first drawn out on re-direct is to deny the defendant the right of any cross examination as to

that new matter. **The prejudice of the denial cannot be doubted.**" (emphasis added), United States v. Caudle, 606 F. 2d 451, 458 (4th Cir. 1979) citation omitted.

In its decision in Delaware v. Van Arsdall, the Supreme Court vacated the judgment and stated, " the trial court's ruling, by cutting off all questioning about an event that the prosecution conceded had taken place and that a a jury might reasonably have found furnished the witness a motive for favoring the prosecution. This denial is subject to a harmless error analysis, i.e. was the error harmless beyond a reasonable doubt.

Since there was clearly error by the trial court, the Government must show that the violation of the defendant's confrontation right was harmless beyond a reasonable doubt.

In Riggi the court found the Government did not meet that heavy burden. Fino, the Riggi witness, was a key witness to the Government and it was extremely important for the defense to neutralize, if at all possible. As in Riggi, Mr. Ruchlewicz was the Government's key witness who the defense in this instant case also needed to try to neutralize. Allowing the undermining of his powerful exculpatory evidence with an explanation that went totally unchallenged, with a witness whose testimony is as relevant to the theory of the case and new evidence to the jury which went unexplained, impacted the defendant's constitutional rights of confrontation and compulsory process and like in Caudle is a prejudice of denial that cannot be doubted.

Yet in it's decision (Exhibit J: Appellate Court Decision), the Third Circuit

panel affirmed the district court's denial of re-cross examination on new facts and matter that significantly undermined the entire defense strategy. The Panel affirmed the denial of compulsory process of a key witness (Mr. Ruchlewicz). The Panel never dealt with the important constitutional confrontation and compulsory process and simply took a pass stating that they need not conduct a harmless error analysis and that even if it was error, it was not harmless beyond a reasonable doubt.

For far to long, this hands off approach has dominated decisions by the various appellate courts. Instead of throughly exploring the extent of an error on a trials proceedings, courts have all to often withheld ruling on critical issues of importance in favor of simple edicts. It has become apparent that this Higher Court needs to intervene and set practical standards which require the various appellate courts to conduct a complete harmless error analysis to assure that justice is available and not relegated to a single individual without proper judicial review.

By not conducting a through harmless error test, the Panel overlooked and misapprehended the incredible significance to the entire defense strategy and theory as set out in the first words of the defense's opening argument. The Panel overlooked the application of the Third Circuit's prior analysis of the same issue in Riggi. The Panel's opinion contradicts the established cases of it's own and other circuits regarding confrontation, compulsory process and harmless error review.

The Supreme Court in Davis v. Alaska, claimed, "Denial of the right of effective cross examination is constitutional error in the first magnitude which no amount of showing of want of prejudice can cure." It further stated,

"the witness was in effect asserting, under protection of the trial court's ruling, a right to give a questionably truthful answer to a cross-examiner pursuing a relevant line of inquiry; it is doubtful whether the bold "NO" answer would be given by Green absent a belief that he was shielded from traditional cross-examination." This could equally be said of Mr. Ruchlewicz in this case. As the Court decided in Davis, " The essential question turns on the correctness of the ... court's evaluation of the "adequacy" of the scope of cross examination permitted." Also as the Court decided in Davis, it should disagree with the Trial Court and the Third Circuit regarding it's interpretation of the Confrontation Clause.

In Kotteakos v. United States, 90 L. Ed. 1557, 328 U.S. 750-780 (1946) the Court outlined that, "although the federal harmless error statute does not require Federal Appellate Courts to disregard entirely the outcome of the case, the primary question for the court is, not whether the jury was right in its judgment regardless of the error or its effect upon the verdict, but upon the jury's decision, the test being the impact of the error on the minds, not of the appellate judges, but of the jurors, in the total setting."

In this case, the standards outlined by the Supreme Court in Kotteakos, were ignored. Anyone who reviews the trial record in a fair, honest and reasonable reading of the facts and not just the summations of the Government, must come to the conclusion that the denial of the confrontation throughout the trial on re-cross and the refusal of the compulsory process of a key witness provided appellant with damaging and harmful errors of constitutional dimensions as has been previously demonstrated, thus impacting the jurors in the totality of the setting.

The Third Circuit refused to consider whether such a ruling as in this case was harmless beyond a reasonable doubt, but stated that while the witness (Mr. Ruchlewicz) was an important witness for the prosecution, the error in relation to this witness was only marginally relevant in the context of the trial. Nothing could be further from the truth.

This decision violates the Third Circuit own rulings and precedents. In Government of the Virgin Islands v. Mills, 956, F. 2d 4435 (3rd Cir. 1992), the Court states, " The U.S. Constitution amendment VI right to compulsory process was not absolute... Rather, the accused must show how that testimony would have been both material and favorable to his defense. Evidence is material only if there is a reasonable likelihood that the testimony could have affected the judgment of the trier of fact. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome." United States v. Pflaumer, 774 F. 2d 1224 (3rd Cir. 1985).

In this case, that "reasonable probability" was clearly and sufficiently outlined in the defendant's appeal to the trial court, it was sufficient to undermine the confidence of the outcome, it was not just one incident of failure to re-cross and challenge new evidence and matter by the prosecution during redirect, it was a tidal wave of new evidence and matter which taken as a whole surely influenced the jury.

In 1948, Justice Black, writing for the Supreme Court, declared that a defendant's "right to his day in court" is "basic in our system of jurisprudence" and includes "as a minimum, a right to examine the witness against him, to offer testimony, and to be represented by counsel." In re Oliver, 333 U.S. 257, 273, 68 S. Ct. 499, 92 L. ed. 682 (1948) (emphasis

added).

These rights were denied to the defendant during his day in court. The errors were so pervasive and egregious that they in fact could and should be termed "structural" since they impacted the fundamental fairness of the entire trial proceedings, Arizona v. Fulminate, 499 U.S. 279, 11 S. Ct. 1246, 1264-65, 113 L. Ed. 2d 302 (1991); United States v. Pavelko, 992 F. 2d 32, 35 (3rd Cir. 1993); United States v. Lewis, 776 F. 3d 285 (3rd Cir. 2014); Weaver v. Massachusetts, 137 S. Ct. 1899, 198 L. Ed. 2d 420 (2017).

Under the "structural error or defect" doctrine, a showing of "prejudice" requires automatic reversal. See USA v. Stevens, 223 F. 3d 239 (3rd Cir. 2000); Johnson v. Pinchal, 392 F. 3d 557 (3rd Cir 2004) in which the court stated that "structural errors" are defects that affects the framework of the trial and infect the truth gathering process itself.

In this case the truth gathering process was affected by the denial of the confrontation and compulsory process regarding the Government's main witness and new evidence during the trial which impacted the trial's fundamental fairness, showed bias by the Court, had an impact on the jury which is to difficult to measure and in essence deprived the Appellant of a full and complete right to counsel, in violation of Gideon v. Wainright, 372 U.S. 355, 9 L. Ed. 2d 799, 83 S. Ct. 792 (1963).

Just as a table cannot stand without it's legs, the judicial proceedings of this case cannot stand with the errors outlined, the table of justice, thus collapses.

This Honorable Court needs to clarify the parameters regarding re-cross on new matter and evidence presented during redirect. End the disarray that currently engulfs the Courts on this issue. If we are to follow John Quincy Adams' call for a government of laws and not of men, than consistency is required so that those laws mean the same thing every time they are applied. Otherwise, to the extent that the variation is controlled by men, it is a government of men.

This Court as was the case in Riggi, Caudle, Homues, Pointer, Davis, Lee, Smith, Alford, Mills, and Van Arsdal should review this case de novo, vacate this judgment and set a precedent for future courts to follow.

ARGUMENT TWO

If one wants to travel across the country, you might start your journey in the southwest United States in a dusty town called Why, Arizona. Heading cross-country would take you through Uncertain, Texas. Ultimately you would reach your destination -- Panic, Pennsylvania.

These are real places across the landscape of America, though not likely a trip one would ever choose to take. Yet, many times this is exactly what the journey feels like for those running for higher public office.

When one looks at our nation's campaign finance laws, the same trip can be traced. The uncertainty and confusing nature of the laws makes one running for office ask Why. Then as one continues the journey you find yourself uncertain of what they all mean and finally end up in Panic, thinking that you might have broken a law or crossed a line that you didn't even know existed. This is the nature of our campaign laws as they relate to quid pro quo and campaign contributions.

This appeal raises substantial questions regarding the split among the circuits in their application of McCormick v. United States, 500 U.S. 257 (1991) and United States v. Evans, 504 U.S. 255 (1992). McCormick requiring and explicit quid pro quo in relation to campaign contributions and Evans stating a lesser standard for other types of non-campaign related quid pro quo.

Several Courts seem to interpret Evans as an addendum to the McCormick standard, allowing implicit quid pro quo in both campaign and non-campaign contribution cases, but the two cases are fundamentally different in their

treatment of the First Amendment which as this Court has recently ruled in Federal Elections Committee v. Ted Cruz for Senate, et. al., 596 U.S. __ (May 16, 2022), "has its fullest and most urgent application precisely to the conduct of campaigns for political office."

In McCormick, the Court held that the existence of a "quid pro quo" is necessary to convict a public official of Hobbs Act extortion "under color of right" based on campaign contributions. The Court also held that there must be an "explicit" promise or undertaking by the official to perform or not perform an official act. The Court was clearly mindful of the reality of the political system:

> To hold that legislators commit the federal crime of extortion when they act for the benefit of constituents or support legislation furthering the interests of some of their constituents, shortly before or after campaign contributions are solicited and received from those beneficiaries, is an unrealistic assessment of what congress would have meant by making it a crime to obtain property from another with his consent " under color of official right.

Justice Scalia further wrote, "distinction between lawful campaign contributions and unlawful extortionate activity is an explicit promise of favorable action" Id. at 278 (Scalia J., concuring); see also Luzerne County Ret. Bd. v. Makowski, 627 F. Supp. 2d 506, 563 (M.D. Pa. 2007) reiterating that "campaigns are expensive, and candidates must constantly solicit funds."

The analysis in McCormick between campaign contributions and non-campaign contributions is central to these cases and is at the heart of this instant case.

The McCormick analysis does not just focus on the Hobbs Act, but on the unique circumstances of the political process and the First Amendment right

to make a lawful campaign contribution. McCormick's quid pro quo analysis should clearly be the standard in reviewing this instant case since the Government's allegations are solely related to campaign contributions for contracts.

The Government in this case was permitted to introduce evidence of legal campaign contributions to support it's charges, even contributions that were not alleged nor proven to be connected to any criminal offense or activity, then allowed to invite the jury to convict on the basis of legal and constitutionally protected conduct. **If the conviction in this case is allowed to stand, it will expose countless citizens and those running for political office to potential prosecution.**

Over the years the federal courts have developed a body of law extremely protective of individuals charged on these grounds. For example, the law permits an individual to give to an official, in an attempt to build a reservoir of goodwill that might ultimately affect one or more of a multitude of unspecified acts, now and in the future" United States v. Sun Diamond Growers of California, 526 U.S. 398, 405 (1999); United States v. Schaffer, 183 F. 3d 833 842 (D.C. Cir. 1999), United States v. Ganim, 510 F. 3d 134, 149 (2nd. Cir. 2007) (Sotomayor, J.) "Bribery is not proven if the benefit is intended to be, and accepted as simply an effort to buy favor or generalized goodwill from a public official who either has been, is, or may be at some unknown, unspecified later time, be in a position to act formally on the givers interest."

All of the above mentioned cases arose from bribes premised upon gifts, or other things of value but not campaign contributions. Yet, even on these

facts, the Courts in these cases narrowly described the circumstances under which such gifts may be criminalized.

In Sun Diamond, the Court stated that conduct does not become a crime unless an "exchange" is proven between the payor and public official, whereby both parties reach a quid pro quo agreement, understanding the conduct of the public official will be controlled by the gift.

As previously stated, the law goes even further when the "thing of value" underlying a bribery charge is a campaign contribution, requiring the Government to prove an explicit quid pro quo agreement, including clear and unambiguous terms understood by both parties at the time the contribution was made. Thus making it significantly harder to prove than an "implicit quid pro quo" that satisfies a corruption charge involving things of value other than a campaign contribution. In contrast to a non-campaign bribery case, where the "stream of benefits doctrine" applies, a bribery case premised upon campaign contributions requires that each quid, or thing of value, be linked to a specific quo, or official act" United States v. Wright, 655 F. 3d 560, 568 (3rd Cir. 2012).

Campaign contributions provided to a public official can also implicate 18 U.S.C. §§1346 and 1343 involving honest services fraud and mail fraud in connection with bribery. Every court has addressed the issue regarding the necessity of quid pro quo, including the Third Circuit, has ruled that these statutes require proof of a specific quid pro quo. United States v. Antico, 275 F. 3d 245 (3rd. Cir. 2001 and United States v. Kemp, 500 F. 3d 257 (3rd. Cir. 2007) concluding that bribery requires a specific intent

to give or receive something of value in exchange for an official act.

In United States v. McDonnell, 136 S. Ct. 2355, 195 L. Ed. 2d 639 (2016) the court set a new standard for "official acts." It stated the public official has to do more than set up a meeting, talk to another public official or organize an event for the payor. The Court held an official act must invoke a "formal exercise of governmental power." be specific and focused akin to a "lawsuit hearing, or administrative determination." id. at *13-14. Just "setting up a meeting, talking to another official, or organizing an event is not enough" Id. at *17.

In light of clear and definitive case law that is applicable to one involving campaign contributions, an analysis of the actual trial testimony to the specific counts of conviction is necessary.

Overt Act No. 1

Zoning nad Inspection of 1324 N. Sherman Street

In it's indictment, the Government in paragraph 19, "On or about May 21, 2015, because of the inquiry made by Defendant Edwin Pawlowski, a city of Allentown building inspector expedited the inspection of 1324 N. Sherman Street." (Exhibit K: Copy of indictment)

Outside of any evidence which demonstrated a specific quid pro quo -- a payment "made in return for an explicit promise or undertaking by the official to perform or not perform an official act." The Government failed on all the steps outlined in McDonnell.

> Q: Okay. And the person that you were dealing with in regards to getting whatever help ended up happening and I'm not sure what that is, but whatever help occurred and whatever problems, you had, you relayed that to your

person that you were paying, Sam Ruchlewicz, correct?

A: Yes

Q: Okay. And both as to the inspection that comes up later in May and as to the zoning thing with Barbara Nemith, the person that you contacted about the situation both times was Sam Ruchlewicz, correct?

A: Yes

(Haddad Cross - Jury Trail- 2/11/18; page 69, lines 14-14) Regarding December 14, 2013 Request

In this act there was no ' question, matter, cause, suit, proceeding or controversy that may by law be brought' before a public official since zoning and inspection decisions do not come before the mayor for approval or review. In addition, no "decision" or "action" identified "question, matter, cause, suit, proceeding or controversy as outlined in McDonnell was described, only that an inquiry was made. Thus the act fails to meet the test outlined by the Third Circuit Court in United States v. Fattah, 902 F. 3d 197 (3rd. Cir. 2018) or McDonnell.

The McDonnell Court 136 S. Ct. at 2368 explained:

> Setting up a meeting, hosting an event, or calling an official (or agreeing to do so) merely to talk about a research study or to gather additional information ... does not qualify as a decision or action on the pending question or whether to initiate the study.

OVERT Act No. 2

Collection of Delinquent taxes and Municipal Claims

Again, outside of any evidence which demonstrated a specific quid pro quo -- a payment " made in return for an explicit promise or undertaking by the official to perform or not perform an official act." The Government failed on one of the two steps outlined in McDonnell.

While step one is clearly met, a contract pending before the mayor for approval, the Government falls short on step two by failing to show any

concrete evidence that the defendant made a "decision' or took "an action" on the identified "question, matter, cause, suit, proceeding or controversy, i.e., the contract. The Government failed to prove or present evidence that the defendant knowingly entered into an agreement for specific unlawful purposes charged in the indictment.

Sean Kilkenny regarding the December 18, 2013 meeting.

> Q: Okay. What I'm asking you is: There was no -- mayor never put any strings on that in any way, shape or form in that conversation did he?
>
> A: He did not.
>
> (Kilkenny Cross - Jury Trial- 1/29/18; page 53, lines 1-4)

> Q: But he didn't say anything to you. In other words, the mayor didn't say anything to you to force you to write that check. He didn't say to you, "Look, if you want to get this legal job, and you want this RFQ to go well, you better pony up." He never said anything like that, did he?
>
> A: He did not.
>
> (Kilkenny Cross- Jury Trial- 1/29/18; page 57, lines 11-16)

Overt Act No. 3

Lighting Design and Installation Project

As in the previous overt acts, the Government presented no evidence evidence which demonstrated a specific quid pro quo. The Government as in overt act two failed one of the two steps outlined in McDonnell.

In this act step one is clearly met, a contract pending before the mayor for approval, but the Government falls short on step two by failing to show any concrete evidence that the defendant made a "decision" or took "an action" on the identified "question, matter, cause, suit, proceeding or controversy, i.e. contract.

In paragraph 66 of the indictment it states, " on or about January 28, 2015, after S.R. told Patrick Regan that the Mayor had plans and that S.R. needed to get vendors to give back "a little bit," Regan agreed. At no time did the Government present evidence that the defendant knew of this conspiracy or condoned it, to the contrary, evidence presented showed the defendant clearly did not know or condone this ask for funds. Thus a conspiracy under this overt act is unsustainable since a defendant's "participation in a scheme whose ultimate purpose a defendant does not know is insufficient to sustain a conspiracy under 21 U.S.C. Z846," United States v. Sliwo, 620 F. 3d 630, 633-34 (6th Cir. 2010); accord United States v. Boria, 592 F. 3d 476, 481-82 (3rd. Cir 2010).

OVERT ACT No. 4

Contract awarded for Cybersecurity

The Government in this act could show they met steps one and two of McDonnell, the mayor oversaw the contracting process in this case since it was under $40,000 and approved the contract. No city rules were violated and the contact was approved as prescribed by the city's charter.

What the Government cannot and failed to prove was any evidence which demonstrated a specific quid pro qou - a payment "made in return for an explicit promise or undertaking by the official to perform or not to perform an official act". Instead the Government presented circumstantial evidence that attempted to link legitimate campaign contributions to the approval of the contract which at the time of its closing arguments, the Government failed to prove.

Overt Act No. 5

Engineering Services for Basin Street

Due to the fact that the Government presented absolutely no evidence of the mayor having any direct intervention regarding this contract, they failed to establish a basis for the two step process outlined by the courts.

As with the previous counts, the Government failed to prove any evidence which demonstrated a specific quid pro quo.

> Q: And what you're -- and after that situation, he say to you, "So I could use your help." There is no mention there of you -- of getting your help in return for any contract any was, shape or form in there is there? And if it is there, show it to me.
>
> A: There it's in this text.
>
> Q: Right. That's what I'm asking about. In what I'm reading in this meeting that the Government has produced, there is nothing referencing any contracts or getting your help financially or politically in return for any contract, is there in that?
>
> A: No
> (McTish Cross - Trail Jury- 2/8/18; Page 125, lines 12-23)

Overt Act No. 6

Consulting design serivices for Aquatic Renovations

As with the previous overt acts, the Government again presented absolutely no evidence of the mayor having any direct intervenetion regarding this contract and thus they failed to establish a basis for the two step process outlined by the courts. The Government also again failed to demonstrate a specific quid pro quo.

> Q: Okay. Any of his solicitation for money in the conversation between the two of you had nothing to do with the pool contract did it?
>
> A: That's correct.
> (Biondo Cross - Jury Trial- 2/12/18; Page 162, lines 1-5)

Overt Act No. 7

Scott Allinson and Law Firm No. 2

As with all of the previous acts, the Government presented absolutely no evidence of the Mayor having any direct intervention regarding this contract and thus failed to establish a basis for the two step McDonnall process or a specific quid pro quo.

> Q: Okay. Now, after this meeting, then based on what you're telling me about this meeting, and what we heard about the meeting, without telling us about it, did the mayor ever request contributions from you in connection with the awarding of legal services?
>
> A: No, sir he did not.
>
> (Sorrentino cross- Jury Trial - 2/14/18; page 123, line 11-20) Regarding May 20, 2015 request.

The record will show that the "official act" issues presented in this instant case are exceptionally thin and/or non-existent. The Government merely puts forth inference upon inference but fails to prove under the law that an explicit quid pro quo occurred in any of the counts presented in this case. In United States v. Brodie, 403 F. 3d 123 (3rd Cir. 2005), the Court states, "conspiracy cannot be proven by 'piling inference upon inference' where those inferences do not logically support the ultimate finding of guilt."

The decision by the Third Circuit Panel never dealt with this actual testimony as to "quid pro quo" or "official act." their opinion never explains how the real facts ofthe case, not the summerized or assumed facts fit the dual requirements of McCormick and McDonnell.

This case involves important questions about the role of campaign contro-butions in our system of privately financed elections and where the line should be drawn distinguishing between what is and what is not lawful.

The Panel's decision in this case stretches the precedents outlined in McCormick and McDonall well beyond the limits of these cases, underscoring the need for this Court to intervene and reconcile the law as it relates to First Amendment protected activities.

A story is told of a couple who stopped to admire a large abstract painting and noticed open paint cans and brushes underneath it. Assuming it was a "work in progress" that anyone could help create, they stroked in some color and left. The artist, though, had purposefully left the supplies there as part of the finished work's display. After reviewing the video footage of the incident, the gallery acknowledged the misunderstanding and didn't press charges.

Just like this story, the Supreme Court has through it's decisions in McCormik, Evans, and McDonnall left what many circuit courts interpret as a "work in progress", thus adding to the law in regards to quid pro quo, official acts and legitimate campaign contributions. This Court must now make it clear to the circuit courts and the Government what the definative law is on these important issues, otherwise like the couple in the museum, many of those seeking public office and involved in the public financing of campaigns may find themselves inadvertently breaking laws without knowing it.

Don't make the final destination on the road to public office Panic Pennsylvania, but help those who desire to serve continue their journey to a destination that allows success under the law.

CONCLUSION

For the foregoing reasons, the Appellant Edwin Pawlowski respectfully requests this Court to grant a petition for Writ of Centiorari pursuant to 28 U.S.C. §1254 (1) and Rule 10.

"Justice" is a concept which each of us has spent a lifetime learning. It's a concepts that each of us carries about in his or her own heart of hearts. It's the most complex concept that we have. Individually, our concepts of justice differ in some particulars, but within our society, there is a much larger reservoir of community held beliefs. It's the commonly held beliefs that make us a society. It doesn't matter that we come from all four corners of the earth -- From every continent and nation on earth. It doesn't matter that we profess different religious beliefs. What really makes us a society that is built on a foundation of laws that makes us the United States is a bundle of commonly held beliefs like "right" and "wrong", "fair play", and "justice." It is justice that has been denied this petitioner and what we beg this Honorable Court to restore.

Respectfully Submitted,

Ed Pawlowski

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