



**IN THE CIRCUIT COURT FOR THE TENTH JUDICIAL CIRCUIT
 JEFFERSON COUNTY, ALABAMA**

STATE OF ALABAMA,)	
)	
v.)	CASE NO. CC-2017-4044
)	
SHERRY WELCH LEWIS,)	
)	
Defendant.)	

MORE DEFINITE STATEMENT

COMES NOW the State of Alabama, by and through its Attorney General, and provides a more definite statement in accordance with this Court's order dated June 4, 2018 (Doc. 56), and pursuant to Rule 13.2 of the Alabama Rules of Criminal Procedure.¹

A. Statement of Nonwaiver of Defense

The State of Alabama provides this more definite statement pursuant to this Court's order (Doc. 56), and in the interests of justice. However, the State does not waive its defense to the untimeliness of Defendant Lewis' motion. See Ala. R. Crim.

¹ In *Hunt v. State*, 642 So. 2d 999, 1022, 1026 (Ala. Crim. App. 1993), *aff'd sub nom.*, *Ex parte Hunt*, 642 So. 2d 1060 (Ala. 1994), the defendant's attack on the sufficiency of his indictment was rejected, in part, based on the State's "lengthy written response with extensive exhibits." This more definite statement, and the State's response to Defendant Lewis' motion and supporting exhibits (Doc. 48), are provided in the spirit of protecting Defendant Lewis' rights as recognized in *Hunt*. The State believes the length and breadth of both documents provides a recognizable, legal benefit to Defendant Lewis.

P. 13.2(e).

Defendant Lewis filed a waiver of arraignment on January 31, 2018, at which time she entered a plea of not guilty. (Doc. 25.) A motion for a more definite statement must be filed prior to the entry of the defendant's plea. Ala. R. Crim. P. 13.2(e); *see also Ex parte Tomlin*, 443 So. 2d 59, 62 (Ala. 1983) (holding that a defendant's failure to object to alleged irregularities in an indictment prior to arraignment constitutes waiver of the issue). Defendant Lewis' motion for a more definite statement was not filed until April 13, 2018. (Doc. 27.) Lewis's waiver of arraignment and plea of not guilty waived any right she possessed to contest the sufficiency of the indictment.

Thus, while the State provides the following statement in compliance with this Court's order and in the interests of justice, the State of Alabama explicitly reserves its right to assert the waiver of any legal issue associated with the sufficiency of the indictment (or, this more definite statement) during any future appeal, on the ground that Defendant Lewis' motion was untimely.

B. Count One (Use of Official Position or Office for Personal Gain)

1. Preamble

Count one of the indictment charges Defendant Lewis with the use of her public position or office as a member of the Birmingham Water Works Board (BWVB) to obtain personal gain for herself or a family member, where such use and gain were not specifically authorized by law. The offense of use of official position or office for personal gain is a continuing offense under the laws of the State of Alabama. See, e.g., *Ex parte Hunt*, 642 So. 2d 1060 (Ala. 1994) (finding evidence of the conversion of monetary contributions from multiple sources/contributors to defendant's personal use to support the single offense of use of public position or office for personal gain); cf. *McCullough v. State*, 63 Ala. 75, 78 (Ala. 1879) (describing indictment for offense of overseer of a public road neglecting or failing to perform the duties of office as consisting of "a single omission, or a series of omissions of duty").

Alabama courts recognize that the offense of use of public office or position for personal gain "will most often be established by circumstantial evidence." *Fitch v. State*, 851 So. 2d 103, 135-36 (Ala. Crim. App. 2001). The term "gain" is

not intended to be precise or comparative, because “[a] primary objective of the Code of Ethics is that government officials avoid *recurring* situations in which there is a temptation to place personal gain, economic or otherwise, above the discharge of their fiduciary duty to the public.” *Chandler v. State*, 615 So. 2d 100, 106-07 (Ala. Crim. App. 1992) (quoting *Zerweck v. State Comm’n on Ethics*, 409 So. 2d 57, 60-61 (Fla. Dist. Ct. App. 1982)) (emphasis added); see also ALA. CODE § 36-25-2(a)(3), (5) (“The Legislature hereby finds and declares... No public office should be used for private gain other than the remuneration provided by law. . . [and] 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... and the duties of the public official.”).

This provision of a more definite statement as to count one of the indictment is intended to dispose of the (waived) issue of the sufficiency of the notice provided to Defendant Lewis as to count one. The State of Alabama is not limiting itself to the evidence described herein. In fact, it is expected that additional evidence will be elicited under the “res gestae” or complete-story rationale. See, e.g., *Doster v.*

State, 72 So. 3d 50, 87-88 (Ala. Crim. App. 2010). Such evidence will relate to "the chain or sequence of events which became part of the history of the case and formed part of the natural development of the facts" and is required to provide background information placing the offense conduct into context. *Id.* (citations omitted). To the extent specific events, dates, persons, entities, or similar facts are alleged in this statement, they are provided only as aids to assist Defendant Lewis in interpreting the State's evidence - previously provided in discovery - to prepare any defense to count one of the indictment. See *R.L.G. v. State*, 712 So. 2d 348, 363 (Ala. Crim. App. 1997).

The State's reference to any statutes and its conclusions that certain facts violate sections of any statute are surplusage, and "neither adds nor detracts from the allegation." *R.S.M. v. State*, 931 So. 2d 69, 76 (Ala. Crim. App. 2005) (internal citations omitted); see also Ala. R. Crim. P. 13.2(d) (providing that "[i]t is not necessary to state the precise time or date at which or on which the offense is alleged to have been committed, or the place where the offense is alleged to have been committed. . . Unnecessary allegations may be disregarded as surplusage").

2. More Definite Statement

Sherry Lewis is a member of the board of directors of the BWWB. In this regard, she is a public official. See *Langham v. State*, 662 So. 2d 1201 (Ala. Crim. App. 1994) (holding that members of public utilities boards are subject to the ethics law). Joseph Lewis, Jr., is Lewis' son and, thus, her family member under Alabama law. ALA. CODE § 36-25-1(15) (1975). Additionally, the State expects the evidence to establish that Joseph Lewis resided in Defendant's home, as well as in an apartment leased in Defendant Lewis' name, during relevant times to the charged offense.

As a member of the BWWB, Defendant Lewis was responsible for providing oversight of management and of all operations and policies of the BWWB. This included the determination of fees to be paid to agents, consultants, and attorneys of the BWWB. In this role, Defendant Lewis participated in the retention of Malcolm Pirnie (a business entity) as the independent engineering consultant for the BWWB (Malcolm Pirnie, Inc. later became ARCADIS). Defendant Lewis also participated in the review and approval of payments to Malcolm Pirnie/ARCADIS for services rendered on BWWB projects as well as in its role as the BWWB's independent engineering

consultant. This included decisions to enlarge Malcolm Pirnie/ARCADIS' scope of work to encompass projects such as the Inland Lake Dam, SAP implementation (Phase 1.5 and 2), and the Shades Mountain Filtration Plant. Defendant Lewis also made decisions to transfer money between BWWB accounts based on certifications provided by Malcolm Pirnie/ARCADIS.

Prior to the return of the indictment, Jerry Jones was a corporate officer of ARCADIS and served as the principal-in-charge for the Birmingham, Alabama, and Atlanta, Georgia, Malcolm Pirnie/ARCADIS offices. Jones frequently attended BWWB meetings and advised BWWB members, including Defendant Lewis. In his capacity as a corporate officer of ARCADIS, Jones procured jobs for Lewis' son, Joseph Lewis, Jr., provided expensive meals to Defendant Lewis and her family, and provided cash to Defendant Lewis and her son. In one instance, in 2013, Jones arranged for Defendant Lewis to enjoy a dinner at the Bellagio in Las Vegas, Nevada, prior to a conference in Arizona.

Terry Williams is an owner/member of Global Solutions International, LLC (GSI, LLC). Williams was also the owner/sole member of Global Systems International, LLC (GSI, LLC).² GSI,

² Global Solutions International, LLC, and Global Systems International, LLC, were both used by Williams to provide

LLC is a subcontractor for Malcolm Pirnie/ARCADIS. Williams also had a relationship with Jerry Jones through a defunct business entity known as EnviroTech Consulting Engineers, Inc. Terry Williams hired Joseph Lewis, Jr., at the request of Jerry Jones. GSI, LLC, performed work on BWWB projects as a subcontractor for Malcolm Pirnie/ARCADIS. Williams also provided Defendant Lewis' son cash payments. Williams accompanied Lewis and Jones to conferences and events during relevant times pertaining to this count of the indictment.

SARCOR, LLC, is a subcontractor for ARCADIS. At the recommendation of Jerry Jones, SARCOR, LLC, hired Joseph Lewis, Jr. Defendant Lewis' son and Selena Rodgers Dickerson, the principal member and owner of SARCOR, LLC, travelled to Chicago to a water-works conference in 2016, during which time they dined with Defendant Lewis. Jerry Jones purchased expensive meals for Defendant Lewis, her son, and Defendant Lewis' mother during this trip. Jones also purchased meals for Selena Rodgers Dickerson.

On March 23, 2014, ARCADIS submitted a proposed scope of work agreement pertaining to the BWWB's Shades Mountain

subcontractor services to Malcolm Pirnie/ARCADIS and to provide cash to Defendant Lewis' son. Thus, both are referred to collectively as GSI, LLC, in this more definite statement.

Filtration Plant upgrade project. On April 28, 2014, Defendant Lewis voted to approve ARCADIS' scope of work for the Shades Mountain Filtration Plant upgrade project. SARCOR, LLC, hired Joseph Lewis, Jr., at the recommendation of Jerry Jones, in March 2014. During this time, SARCOR, LLC, was engaged as an ARCADIS subcontractor on BWB projects. Additionally, GSI, LLC, received payment for work on the Shades Mountain Filtration Plant project, as a subcontractor for ARCADIS.

In the years preceding the indictment, Jerry Jones continuously provided meals, cash, and other items of value to Defendant Lewis which were not authorized by law. The meals included dining at The Rosebud Restaurant, Wollensky's Grill, and the Capital Grille in Chicago, Illinois, in June 2016. Additionally, Jones provided an expensive meal for Lewis' family at Gianmarco's restaurant in December 2014, the night before Defendant Lewis cast the deciding vote to grant a scope of work to Malcolm Pirnie/ARCADIS on the SAP Phase II Customer Relations and Billing Blueprint project.

Jerry Jones assisted Sherry Lewis with obtaining employment for her son, Joseph Lewis, Jr. Said employment was obtained from SARCOR and GSI, LLC. Proceeds from the GSI, LLC, employment were used, in part, to satisfy the rent on an

apartment leased by Defendant Lewis in Huntsville, Alabama.

On May 2, 2016, Jerry Jones authored a letter of recommendation for graduation for the benefit of Joseph Lewis, Jr. This letter was placed on ARCADIS letterhead and was signed by Jerry Jones in his capacity as a vice president of ARCADIS.

C. Count Two (Member of Agency Participating in or Voting on a Matter in Which They Have a Financial Interest)

1. Preamble

Count two of the indictment charges Defendant Lewis with participating in, or voting on, a matter in which she, or a family member, had a financial interest. The "rule of lenity" suggests that the unit of prosecution most beneficial to the defendant should be employed whenever a statute might be subject to attack on the ground that it converts a single crime into two or more offenses (potentially subjecting a defendant to multiple convictions for the same offense). *See, e.g., Girard v. State*, 883 So. 2d 717, 720 (Ala. 2003); *Revis v. State*, 101 So. 3d 247, 333-34 (Ala. Crim. App. 2011). Here, two units of prosecution are envisioned by the statute: (1) a vote and/or (2) participation in a matter. *See* ALA. CODE § 36-25-9(c) (1975).

The State exercised its discretion to charge Defendant Lewis with a single offense for participating in the matter of

ARCADIS' relationship with the BWWB under the 2003 contract/scope of services agreement between the BWWB and Malcolm Pirnie/ARCADIS (including the enlargement of that scope of service agreement to encompass the Inland Lake Dam project, Black Warrior River project, SAP implementation projects, and Shades Mountain Filtration Plant). Considering that Defendant Lewis has already attacked the State's prosecution on double-jeopardy grounds (Doc. 27 at 2, 6-7), the State's decision to charge her under a single-unit-of-prosecution theory was appropriate. Evidence of Defendant Lewis' participation in the matter of ARCADIS' relationship with the BWWB, including her votes to authorize payments to ARCADIS and to approve additional scope-of-work proposals, will permit a jury to determine her culpability while eliminating her double-jeopardy concerns.

2. More Definite Statement

The BWWB is a corporation organized under Title 11, Chapter 50, Article 8, of the Code of Alabama of 1975. See ALA. CODE § 11-50-230, *et seq.* (1975). Title 11 of the Code relates to "Counties and Municipal Corporations," while Chapter 50 contains "Provisions Applicable to Municipal Corporations Only." The BWWB was created by action of the City of

Birmingham. Additional municipalities have since entered into agreements with the BWWB pursuant to Title 11, Chapter 50 of the Code. The BWWB is a municipal board.

Sherry Lewis is a member of the board of directors of the BWWB. During relevant times pertaining to the charged offense, she has additionally served as the chairperson of the BWWB. Joseph Lewis, Jr., is Lewis' son. As early as 2009, Joseph Lewis, Jr., began receiving payments from Donald Taylor (or business entities owned or controlled by Donald Taylor), a subcontractor for Malcolm Pirnie/ARCADIS on BWWB projects. As early as 2010, Joseph Lewis, Jr., began receiving payments from Terry Williams and/or Global Solutions International, LLC, a subcontractor for Malcolm Pirnie/ARCADIS on BWWB projects. Said payments continued until December 2013. In March 2014, Joseph Lewis, Jr., began working for SARCOR, LLC, a subcontractor for Malcolm Pirnie/ARCADIS on BWWB projects. Joseph Lewis, Jr., lived with his mother at that time. Joseph Lewis, Jr., was still employed by SARCOR, LLC, at the time the indictment was returned. Joseph Lewis also received payments directly from Jerry Jones, a corporate officer for ARCADIS.

Sherry Lewis received direct payments from Jerry Jones. Additionally, Sherry Lewis received payments from Jerry Jones

which were first routed through her son.

As a member of the BWWB, Defendant Lewis was responsible for the management and all operations and policies of the BWWB. This included the determination of fees to be paid to agents, consultants, and attorneys of the BWWB. In this role, Defendant Lewis participated in the matter of the review and approval of payments to ARCADIS for services rendered for BWWB work projects. Defendant Lewis also participated in the granting additional scope-of-work agreements to ARCADIS pursuant to the 2003 contract. Defendant Lewis further participated in the matter of determining whether hundreds of millions of dollars should be transferred from various BWWB accounts to the BWWB's operating account, based on certifications provided by ARCADIS.

SARCOR, LLC, is a subcontractor for ARCADIS. Selena Rodgers Dickinson is the president of SARCOR, LLC. SARCOR performed work on various BWWB projects, including the Shades Mountain Filtration Plant project on behalf of ARCADIS.

Defendant Lewis repeatedly participated in the matter of ARCADIS' compensation for work performed on specific BWWB projects, including those in which SARCOR, LLC, GSI, LLC, and entities owned or controlled by Donald Taylor participated.

Defendant Lewis' continuous participation is evidenced, in part, by her votes pertaining to ARCADIS' status with the BWWB, her participation in decisions to modify Malcolm Pirnie/ARCADIS' scope of work, and the nature of her associations with Jerry Jones and subcontractors performing BWWB work for ARCADIS.

Defendant Lewis was prohibited from participating in these matters because of the direct financial gain to Defendant Lewis, the financial interest she possessed in the matter, the financial gain to her son, as well as the financial interest in the matter possessed by her son.

D. Count Three (Soliciting or Receiving Anything for the Purpose of Corruptly Influencing Official Action).

1. Preamble

Count three of the indictment charges Defendant Lewis with the offense of soliciting or receiving anything for the purpose of corruptly influencing official action.

It is expected that much of the evidence relating to count one of the indictment will be elicited in support of this offense under the "res gestae" or complete-story rationale. *See, e.g., Doster v. State*, 72 So. 3d 50, 87-88 (Ala. Crim. App. 2010). Such evidence will relate to "the chain or sequence of events which became part of the history of the case and

formed part of the natural development of the facts” and is required to provide background information placing the offense conduct into context. *Id.* (citations omitted). This evidence is not required to be set forth in a more definite statement.

2. More Definite Statement

The facts set forth in support of the more definite statement for count one, above, are hereby incorporated as if set forth fully herein. Additionally, the State expounds on the following allegations of fact.

On February 14, 2013, Jerry Jones, a vice president or corporate officer of Malcolm Pirnie/ARCADIS, and Defendant Sherry Lewis made travel plans to visit Las Vegas, Nevada, the day prior to the beginning of a water-works conference in Arizona. Defendant Lewis had the BWWB’s executive assistant book her a flight from Las Vegas, Nevada, to Phoenix, Arizona, on February 15, 2013. Defendant Lewis flew to Las Vegas, Nevada, with Jerry Jones, who paid for drinks and food at a layover in Jacksonville, Florida, on March 9, 2013. That evening, Jones treated Lewis to an expensive dinner at Michael Mena’s Restaurant at the Bellagio Resort in Las Vegas. Jones used a corporate credit card belonging to GSI, LLC, to pay for this meal, even though Jones was not an employee or member of

GSI, LLC. The following day, the pair flew on to Phoenix, Arizona, to attend the water-works conference.

On December 22, 2014, Jerry Jones purchased dinner for Defendant Lewis at Gianmarco's Restaurant in Homewood, Alabama. This dinner included Defendant Lewis, Joseph Lewis, Jr. (her son), Lewis' mother, and an unidentified man. Jerry Jones expended \$553.25 for this meal and submitted it as an expense to ARCADIS.

The following day, December 23, 2014, Defendant Lewis moved that the BWB approve a \$405,020.94 payment to ARCADIS. In addition, Defendant Lewis voted in favor of this payment. At that same meeting, Defendant Lewis moved that the Board approve a scope of services agreement from ARCADIS for implementation of the SAP Phase II Customer Relationship and Billing Blueprint solution. Another director objected because this item had been placed on the agenda the previous day. That director expressed concerns about the project and stated that the issue needed to be reviewed by a committee and that further discussion was warranted.

Defendant Lewis defended the project. Additionally, Jerry Jones spoke in favor of the proposed action.

Thereafter, Defendant Lewis voted in favor of approving a

scope-of-work agreement with ARCADIS with an estimated cost of \$1,499,830.00, for implementation of the SAP Phase II Customer Relationship and Billing Blueprint solution and authorized an estimated \$851,000 scope of services agreement with ARCADIS for program management.

The resolution was adopted by a 2-1 vote. Defendant Lewis was the deciding vote.

On April 18, 2016, Defendant Lewis received a \$1,400 payment from Jerry Jones. On April 27, 2016, Defendant Lewis voted in favor of a resolution to accept a scope of work from ARCADIS to provide construction phase services during the Shades Mountain Filter Plant upgrade project at an estimated out-of-pocket cost of \$3,6000,000.00 to the BWWB.

In June 2016, Defendant Lewis received expensive meals for herself, her mother, and her son, from Jerry Jones. Jerry Jones, Defendant Lewis, and Joseph Lewis, Jr., undertook deliberate action to conceal the nature of at least one of these meals.

Respectfully submitted on this the 3rd day of July, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of July, 2018, I electronically filed the foregoing using the AlaFile system, which will send notification of such filing to Elizabeth A. Young, Esq., and Brett M. Bloomston, Esq., counsel of record for Defendant Lewis.

Additionally, a courtesy copy was served on counsel for Defendant Lewis as follows:

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