

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 06-CR-20 (RTR)

GEORGIA THOMPSON,

Defendant.

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**DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL  
OR FOR A NEW TRIAL**

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**NOW COMES** Georgia Thompson, by her attorneys, Hurley, Burish & Stanton, S.C., by Stephen P. Hurley, and moves the Court for an order entering judgment of acquittal, pursuant to FED. R. CRIM. P. 29(c)(1). In the alternative, she moves for a new trial in the interest of justice, pursuant to FED. R. CRIM. P. 33(a).

Ms. Thompson requests 30 days within which to file a supporting brief and further proposes that the Court permit the government 30 days to respond, and finally allow Ms. Thompson five days within which to reply.

**IN FURTHER SUPPORT** of this motion, Georgia Thompson shows the following:

1. Acquittal.

Viewed in the light most favorable to the prosecution, the evidence that Ms.

Thompson used political (or other) considerations to evaluate and select proposers in the "Partner" travel contract RFP was insufficient to support a conviction for the following reasons:

a. Lack of any testimony from any of Georgia Thompson's superiors that they spoke to her, directed her or, in any manner, attempted to influence her – and thus, indirectly, the RFP evaluation process.

b. Lack of any testimony from any of Georgia Thompson's superiors, including the Secretary of the Department of Administration, Marc Marotta, Division Administrator Patrick Farley or Deputy Administrator James Langdon that they preferred Adelman Travel Group specifically or any other proposer because of the political ties or contributions which that proposer (or any other) had made (*i.e.*, political reasons or advantage).

c. Lack of any testimony from David Webb, the procurement manager, about how (if at all) Georgia Thompson engaged in a scheme to affect the RFP evaluation process, including the best and final and tie-breaker. Indeed, there is no dispute that a best and final was available in this RFP process or that the RFP evaluation process did not require unanimity as alleged in the indictment.

d. Lack of any evidence regarding an unlawful personal gain obtained by Georgia Thompson as a result of her alleged scheme to defraud. *United*

*States v. Bloom*, 149 F.3d 649, 655 (7th Cir. 1998) (“misuse of office (more broadly, misuse of position) for private gain is the line that separates run of the mill violations of state-law fiduciary duty . . . from federal crime”); *United States v. DeVegter*, 198 F.3d 1324, 1328 (11th Cir. 1999) (“illicit personal gain by a government official deprives the public of its intangible right to the honest services of the official”); *United States v. Frost*, 125 F. 3d 346, 365 (6th Cir. 1997) (“the ‘intangible rights’ theory is anchored upon the defendant’s misuse of his public office for personal profit”); *United States v. Sawyer*, 85 F. 3d 713, 725 (1st Cir. 1996) (“cases in which deprivation of an official’s honest services is found typically involved bribery of the official or her failure to disclose a conflict of interest, resulting in personal gain”).

e. Over repeated objection, the testimony of evaluation committee members Lisa Clemmons, Terri Gill, Frank Kooistra, consultant Ian Thomas, and Bridget Nettesheim was impermissibly admitted; such testimony was premised on speculation and conjecture regarding Georgia Thompson’s intent. “Speculation, ‘funny’ looks, and ‘raised eyebrows’ are not sufficient to convict people for knowingly participating in a scheme to defraud.” *United States v. Bailey*, 859 F.2d 1265 (7th Cir. 1988).

f. Over objection, Ian Thomas was allowed to testify concerning a

statement alleged to have been made by David Webb: "Georgia's not going to be happy about this," or words to that effect. This statement should not have been admitted. The government argued that such a statement was not hearsay under Rule 801(d), FED. R. EVID.; the government, however, never established the prerequisite relationship between Thompson and Webb, such that, for example, the statement is either an adoptive admission, or that David Webb was an agent of Thompson's alleged scheme or a coconspirator.

g. At best, the evidence demonstrates a violation of the applicable sections of the Wisconsin Administrative Code. Such a violation (if proven) in itself is insufficient to constitute a federal criminal offense. That is, it is legally insufficient that the government prove a public employee breached her fiduciary duty; the evidence must demonstrate that the breach was intended to prevent or call into question the proper or impartial performance of the employee's official duties. In other words, "although a public official might engage in reprehensible misconduct related to an official position, the conviction of that [employee] cannot stand where the conduct does not actually deprive the public of its right to her honest services, and it is not shown to intend that result." *United States v. Sawyer*, 85 F.3d 31 (1st Cir. 2001).

2. New Trial.

a. Allowing into evidence, over objections, the testimony of evaluation committee members Lisa Clemmons, Terri Gill and Bridget Nettesheim concerning Georgia Thompson's intent requires a new trial. At trial the government elicited testimony by members of the evaluation committee concerning a meeting on March 3, 2005, during which they discussed the RFP proposer's scores for the "Partner" category. The witnesses testified about Georgia Thompson's demeanor, statements allegedly made by Thompson and their beliefs or impressions which (they believe) explain Georgia Thompson's demeanor and statements and thus, her intent. Testimony falling into the last category is not relevant and based wholly on speculation. Such testimony is not the product of observation but, rather, uninformed (and inadmissible) surmise. Nonetheless, such testimony was admitted into evidence. Testimony regarding these witnesses' perceptions or beliefs is speculative. Rule 602, FED. R. EVID., requires that a witness give testimony based on perception from the five senses – not from some sixth sense. The rule provides that

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of rule 703, relating to opinion testimony by expert witnesses.

Relatedly, Rule 701, FED. R. EVID., provides that:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

In this case, the witnesses' testimony was not rationally based on their observations.

*See Visser v. Packer Engineering Assoc., Inc.*, 924 F.2d 655, 659-60 (7th Cir. 1991) (lay assertion cannot be "flights of fancy, speculations, hunches, intuitions, or rumors about matters remote from [the witness's] experience;" witness not competent to describe motive because testimony too much like psychoanalysis, for which witness not qualified); *Hester v. BIC Corp.*, 225 F.3d 178 (2d Cir. 2000)("[I]n an employment discrimination action, Rule 701(b) bars lay opinion testimony that amounts to a naked speculation concerning the motivation for a defendant's adverse employment decision. Witnesses are free to testify fully as to their own observations of the defendant's interactions with the plaintiff or with other employees, but "the witness's opinion as to the defendant's [ultimate motivations] will often not be helpful within the meaning of Rule 701 because the jury will be in as good a position as the witness to draw the inference as to whether or not the defendant" was motivated by an impermissible animus"); and *Kloepfer v. Honda Motor Co., Ltd.*, 898 F.2d 1452, 1459 (10th Cir. 1990)(citing FED. R. EVID. 701(a) for its conclusion that speculative lay testimony by the plaintiff-as to whether she would have obeyed a

warning-was properly excluded because such testimony would not have been based on the witness's perception.); *see also* FED. R. EVID. 701 Note ("If . . . attempts are made to introduce meaningless assertions which amount to little more than choosing up sides, exclusion for lack of helpfulness is called for by this rule").

b. Allowing into evidence, over objection, Ian Thomas' testimony concerning a statement alleged to have been made by Georgia Thompson to David Webb. Thompson's alleged statement to Webb, as reported by Thomas, should not have been admitted. Now that this hearsay statement was heard and considered by the jury, a new trial must be ordered. *United States v. Hanson*, 994 F.2d 403, 407 (7th Cir. 1993)(the evidentiary error requires reversal where the error has "a substantial and injurious effect or influence on the jury's verdict") citing *United States v. Peak*, 856 F.2d 825, 834 (7th Cir.), *cert. denied*, 488 U.S. 969 (1988). While the government argued to the Court that such a statement was not hearsay under Rule 801(d), FED. R. EVID., it never established the prerequisite relationship between Thompson and Webb, such that, for example, the statement is either an adoptive admission, or that David Webb was an agent of Thompson's alleged scheme or a coconspirator.

**WHEREFORE**, Georgia Thompson asks the Court to enter judgment of acquittal. In the alternative, she seeks a new trial.

Dated this 19th day of June, 2006.

Respectfully submitted,

HURLEY, BURISH & STANTON, S.C.

By: /s/ Stephen P. Hurley  
Stephen P. Hurley  
State Bar No. 1015654  
Attorneys for Georgia Thompson  
P.O. Box 1528  
Madison, WI 53701-1528  
(608) 257-0945 tel.  
shurley@hbslawfirm.com