

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES	:	
	:	
v.	:	CRIMINAL NO. 04-CR-611-3
	:	
JOHN CHRISTMAS	:	

MEMORANDUM AND ORDER

Kauffman, J.

June 16 , 2005

On February 2, 2005, Defendant John Christmas (“Defendant”) was charged in a Superseding Indictment with conspiracy to commit mail fraud, in violation of 18 U.S.C. §§ 371 and 1341 (Count Three); mail fraud, in violation of 18 U.S.C. § 1341 (Counts Four through Six); perjury, in violation of 18 U.S.C. § 1623 (Counts Forty-Six and Forty-Eight); and false statements to the Federal Bureau of Investigation, in violation of 18 U.S.C. § 1001 (Count Forty-Seven). Trial on these counts commenced on April 18, 2005. At the close of the government’s evidence, Defendant moved for acquittal on all counts, pursuant to Federal Rule of Criminal Procedure 29.¹ The Court reserved judgment on this Motion. On June 14, 2005, the jury returned a verdict of not guilty as to Counts Three, Four, Five, and Six; a mistrial was declared as to Count Forty-Six, at which point Defendant renewed his Motion under Rule 29. For the reasons stated below, this Motion will be granted.

In considering a Rule 29 Motion, the Court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could find all of the essential elements of the crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S.

¹ The government withdrew Counts Forty-Seven and Forty-Eight.

307, 319 (1979); United States v. Iafelice, 978 F.2d 92, 94 (3d Cir. 1992). When the Court reserves judgment on such a motion, it must render its decision based on the evidence presented at the time the motion is made. Fed. R. Crim. P. 29(b).

To prove perjury under 18 U.S.C. § 1623, the government must establish beyond a reasonable doubt that a witness testifying under oath or affirmation has given false testimony concerning a material matter, with the willful intent to provide false testimony. See, e.g., United States v. Dunnigan, 507 U.S. 87, 94-95 (1993). The parties stipulated that Defendant testified under oath before the grand jury on December 3, 2003, and that the subject matter of the testimony at issue here was material to the grand jury's investigation. See Government's Exhibit XV-1. Thus, the only question now before this Court is whether a reasonable jury could conclude, beyond a reasonable doubt, based on the evidence presented, that Defendant willfully made a false statement when he testified that he could not recall speaking with Shamsud-din Ali about the Bowman Properties tax delinquency matter on more than one occasion during the period of July 2001 through March 2002.

The Supreme Court has repeatedly admonished that the perjury statute is not to be loosely construed and cautioned that "the drastic sanction of a perjury prosecution" should not be brought to bear in a manner that might discourage witnesses from appearing and offering testimony. See, e.g., Bronston v. United States, 409 U.S. 352, 358-60 (1973). In adhering to this principle, courts have vigilantly protected defendants from perjury prosecutions based on testimony stemming from a faulty memory, confusion, mistake, imprecise questioning, or answers otherwise taken out of context. See Dunnigan, 507 U.S. at 95; United States v. Serafini, 167 F.3d 812, 820-21 (3d Cir. 1999). Consequently, the government's evidentiary burden in this

case is high – the government must offer proof not simply that Defendant had these communications, but that he specifically remembered having them at the time of his grand jury appearance and, nonetheless, willfully testified falsely that he did not recall them.

While the Court is cognizant of the serious nature of the charge and the importance of the utmost candor when testifying under oath, there is simply insufficient evidence for a reasonable jury to find, beyond a reasonable doubt, that Defendant was lying when he stated that he could not remember additional conversations with Mr. Ali. The government has offered, at best, weak circumstantial evidence of Defendant's alleged state of mind. Moreover, the communications in question occurred approximately two years prior to Defendant's testimony before the grand jury and there is no evidence that his recollection was refreshed prior to his appearance or that the government made any effort to refresh his recollection during his appearance. While the government has offered evidence that conversations between Defendant and Mr. Ali did in fact occur, this is not sufficient proof that Defendant remembered those conversations at the time of his testimony. In addition, the evidence presented establishes that Defendant was working with Mr. Ali on several matters including, but not limited to, the Bowman Properties tax delinquency negotiations.

This Court concludes that there is not sufficient evidence from which a reasonable jury could conclude beyond a reasonable doubt that Defendant willfully offered false testimony before the grand jury, and the Rule 29 Motion as to Count Forty-Six must be granted.

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CRIMINAL NO. 04-CR-611-3

ORDER

AND NOW, this 16th day of June, 2005, upon consideration of Defendant's Motion for Judgment of Acquittal Pursuant to Rule 29 (docket no. 184), and the government's response thereto, it is **ORDERED** that the Motion is **GRANTED** as to Count Forty-Six.

BY THE COURT:

**S/ Bruce W. Kauffman
BRUCE W. KAUFFMAN, J.**