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Wednesday, May. 21, 2014

Virginia News

MCDONNELLS

McDonnells lose bids for separate trials

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Former Gov. Bob McDonnell and his wife, Maureen, left the federal courthouse in Richmond after Monday's hearing.

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Posted: Tuesday, May 20, 2014 10:55 am | Updated: 8:37 am, Wed May 21, 2014.

By JIM NOLAN
Richmond Times-Dispatch

A federal judge in Richmond on Tuesday denied defense motions to dismiss the corruption charges against former Gov. Bob McDonnell and former first lady Maureen McDonnell.

U.S. District Judge James R. Spencer also denied the McDonnells' motions for separate trials. The ruling means a joint trial

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will go forward July 28, as scheduled.

The rulings, delivered just one day after lengthy presentations in federal court in Richmond, were not necessarily a surprise to legal observers. But trying the former governor and his wife together will have a significant impact on defense strategy.

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“Whether married or not, the prosecution has an easier path to conviction where a jury might impugn one co-defendant with the acts of the other,” said Charles E. “Chuck” James Jr., a former federal prosecutor and chief deputy Virginia attorney general who is now a partner at Williams Mullen.

“This is a particularly powerful tool where a conspiracy is charged and the reasonably foreseeable acts of each defendant is attributed to all co-defendants,” he added.

“The government clearly benefits by imputing criminal intent to Mr. McDonnell, based on the more salacious allegations against the first lady.”

McDonnell and his wife face a 14-count indictment stemming, in part, from more than \$165,000 in gifts, loans and payments they accepted from Jonnie R. Williams Sr., then-CEO of Henrico County-based Star Scientific, a former tobacco company-turned dietary supplement purveyor. The McDonnells have pleaded not guilty to all charges.

Defense lawyers had argued that the actions McDonnell took on behalf of Star Scientific and Williams were not “official acts” under the federal bribery statutes.

But the judge ruled that the 4th U.S. Circuit Court of Appeals has held that conduct similar to that alleged in the indictment can “fall under the umbrella of ‘official acts.’”

Therefore, the corruption charges should be resolved by a jury, the judge said.

As for the motions to separate the McDonnells’ trials, the “defendants have failed to meet their burden to show that a joint trial will result in a miscarriage of justice or prevent Robert McDonnell from receiving a fair trial,” the judge wrote.

The couple’s defense team will now have to consider whether Maureen McDonnell will

testify on her husband's behalf at their trial. Their attorneys had argued that Maureen McDonnell would testify for her husband if their trials were separate, but would decline to testify if they are tried together.

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The former governor's attorneys said Maureen McDonnell's testimony would be critical to establishing that there was no conspiracy between her and the governor to aid Williams and his company in return for the gifts they received.

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The question now becomes whether the governor's defense can prevail without his wife's assistance.

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"There are a number of tactical considerations that come into play with severance motions," said Jeffrey Bellin, an associate professor of law at the College of William and Mary.

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"These vary based on the precise circumstances, the existence of any incriminating statements by each of the co-defendants, and likelihood of either defendant to testify.

"For example, a co-defendant may be less willing to testify a certain way, or to testify at all, if he or she is also concurrently on trial."

James said observers should not presume the McDonnells' trial strategies always will overlap. But he said the former first couple, "particularly Mr. McDonnell, have shown remarkable solidarity to date."

Prosecutors say the pair used Bob McDonnell's position as governor "to enrich the defendants and their family members by soliciting and obtaining payments, loans, gifts and other things of value" from Williams and his company in exchange for "official acts" that attempted to help promote Star's dietary supplement, Anatabloc.

The judge also denied Maureen McDonnell's motion for dismissal of the additional charge against her — that she sought to obstruct an official proceeding. The judge said the indictment is sufficient.

The judge also denied the McDonnells' request that he expunge from their indictment passages about Maureen McDonnell's purchases and sales of 6,000 shares of Star



Scientific stock.

The McDonnells argued that those “surplus” sections are prejudicial to their case. Prosecutors countered that those sections explain “the defendants’ alleged efforts to avoid public disclosure of their Star Scientific ownership in order to conceal their relationship with Jonnie Williams and Star Scientific.” Prosecutors say the sections are “relevant evidence of consciousness of guilt.”

The judge agreed with prosecutors that those sections of the indictment are relevant to the defendants’ intent.

“Attempts to conceal an interest in Star — especially a personal financial interest — may be probative of intent/animus to defraud and consciousness of guilt,” Spencer wrote.

“Similarly, because intent to defraud may be inferred from the totality of the circumstances, the existence of motivation to defraud may be probative of intent to defraud.”

Earlier Tuesday, the judge issued a number of subpoenas on behalf of the former governor.

Among those subpoenaed are Mary-Shea Sutherland, who briefly served as Maureen McDonnell’s chief of staff. Defense lawyers have suggested that Sutherland organized a luncheon at the Executive Mansion for Williams in an effort to “ingratiate herself with Mr. Williams in order to obtain a lucrative consulting contract once she re-entered the private sector.”

Lawyers for Sutherland have declined comment on that allegation.

Another subpoena went to Mark Rubin, executive director of government relations for Virginia Commonwealth University and VCU Health System. He previously served as senior adviser and counselor to then-Gov. Timothy M. Kaine. It is unclear which of Rubin’s roles McDonnell’s defense finds relevant.

Another subpoena went to John Clore, a diabetes researcher at VCU. University researchers reportedly believed McDonnell backed efforts to fund studies of Star’s

Anatabloc through the state tobacco fund.

Defense lawyers have argued that McDonnell’s predecessors as governor engaged in “indistinguishable conduct,” including Kaine receiving use of a Caribbean vacation home, valued at \$18,000, from an investor whom he reappointed to the Virginia Commission on Higher Education Board Appointments.

A spokeswoman for Kaine, now a U.S. senator, said in a statement in January that “when Tim Kaine was governor, he went beyond the requirements of Virginia law, even disclosing gifts of value beneath the reporting threshold.”

Subpoenas also were issued to a number of officials with the Pentagon Federal Credit Union.

In previous filings, lawyers for Bob and Maureen McDonnell have said they are looking for a variety of documents from the credit union, including those “reflecting any concerns” regarding the McDonnells’ applications to refinance their loans, or any suggesting that the McDonnells “knowingly provided false information to PenFed.”


The McDonnells’ indictment alleges that they did not disclose that they had loans with Williams when they sought loans in October 2012 and in early 2013 from a financial institution and another private lender.

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