

JUN 24 1983

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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UNITED STATES OF AMERICA)

vs.)

CRAWFORD ENTERPRISES, ET AL.)

C. A. NO. H-82-224

MEMORANDUM AND ORDER

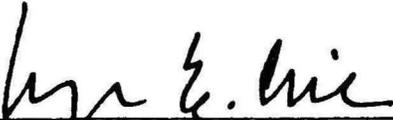
Came to be heard the motions of Defendants McLean and Uriarte to dismiss the indictment. Uriarte has moved for dismissal based on the Eckhardt amendment, 15 U.S.C. §§ 78dd-2(b)(3), 78ff(c)(3). McLean has moved for dismissal based on the Eckhardt amendment, grand jury misconduct, and prosecutorial misconduct. McLean and Uriarte are indicted in Count 1 for conspiracy to violate the Foreign Corrupt Practices Act ("FCPA"), 15 U.S.C. § 78dd-2, in violation of 18 U.S.C. § 371. They are indicted in Counts 4-24 and 27-48 for aiding and abetting the other Defendants to violate the FCPA in violation of 18 U.S.C. § 2 and 15 U.S.C. §§ 78dd-2(a)(1) & (3), 78dd-2(b).

The Eckhardt amendment states that whenever an employer has been found to have violated the FCPA, then any of its employees or agents may be convicted of violating the FCPA. Both Uriarte and McLean were employees of International Harvester Company during all times material to the offenses

charged in the indictment. International Harvester Company plead guilty to conspiracy to violate the FCPA, in violation of 18 U.S.C. § 371, in the United States District Court, Southern District of Texas, Houston Division, Criminal No. H-82-244. Conspiracy and the related substantive offense which is the object of the conspiracy are separate and distinct crimes. Ianelli v. United States, 420 U.S. 770, 777-78 (1975); United States v. Romeros, 600 F.2d 1104, 1105 (5th Cir. 1979), cert. denied, 444 U.S. 1077 (1980); United States v. Ragano, 520 F.2d 1191, 1198 (5th Cir. 1975), cert. denied, 427 U.S. 905 (1976). Since International Harvester Company plead guilty to conspiracy and not to a substantive FCPA violation, it has not been found to have violated the FCPA. The Eckhardt amendment protects employees like McLean and Uriarte from prosecution under the FCPA when their employer has not been found to have violated the FCPA.

Accordingly, it is ORDERED that Defendants McLean and Uriarte's motions to dismiss the indictment are GRANTED in part and Counts 4-24 and 27-48 are dismissed against McLean and Uriarte and that Defendants McLean and Uriarte's motions to dismiss the indictment are DENIED in all other respects.

SIGNED and ENTERED this 24th day of June 1983.



GEORGE E. CIRE
UNITED STATES DISTRICT JUDGE