

U.S. v. Stevens: Former GSK Attorney Acquitted on All Counts

On May 10, 2011, Judge Roger Titus of the District of Maryland dismissed the case *United States v. Stevens*. The defendant, Lauren Stevens, a former Associate General Counsel at GlaxoSmithKline, had been indicted based on her involvement in responding to an FDA inquiry to GSK regarding possible off-label marketing of GSK's antidepressant product Wellbutrin SR for weight loss and obesity. In response to the FDA inquiry, Ms. Stevens on behalf of GSK had sent six substantive letters, and had provided documents, to the FDA between December 2002 and November 2003. The indictment charged her with two counts of obstruction of justice (18 U.S.C. § 1512 and 18 U.S.C. § 1519) and four counts of false statements, alleging that GSK's letters to the FDA contained false statements and that the document production to FDA was incomplete.

Following the close of the government's case, Ms. Stevens' trial counsel – including a team of Ropes & Gray attorneys – moved for acquittal under Federal Rule of Criminal Procedure 29, on the grounds that the government had failed to present evidence sufficient to prove any of the counts beyond a reasonable doubt. Judge Titus granted the motion, finding insufficient evidence on which a reasonable jury could find that Ms. Stevens ever intended to commit a crime. The court noted that, with regard to the obstruction counts, Ms. Stevens fell within the safe harbor of 18 U.S.C. § 1515(c), which shields attorneys who engage in a bona fide legal representation. With regard to the false statements counts, the court found that the statements were made in good faith with the fully-informed advice of GSK's outside counsel. The court rejected the government's proffered interpretation of certain charged statements as false, holding that the statements were accurate when read in context.

This was the first time in Judge Titus's seven and a half years on the federal bench that he had granted a motion for acquittal without sending the case to a jury. In granting the Rule 29 motion for judgment of acquittal, Judge Titus said, "It would be a miscarriage of justice for this case to go to the jury." He added that, Ms. Stevens "should never have been prosecuted and she should be permitted to resume her career."

Also of note, the original indictment of Ms. Stevens had been dismissed after the grand jury transcripts, disclosed on Defendant's motion, revealed that prosecutors had incorrectly instructed grand jurors on the relevance of advice of counsel. (Ms. Stevens was reindicted in April 2011.)

Ms. Stevens' acquittal cannot be appealed by the government, as it was ordered before the case went to the jury and an appeal would thus expose Ms. Stevens to double jeopardy.

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