

May 9, 2005

The Honorable Salem V. Ahto, J.S.C.  
Morris County Superior Court  
P.O. Box 910  
Court and Washington Streets  
Morristown, NJ 07963-0910

**Re: State v. Nicholas Drakos  
Indictment No. 04-10-01323-I  
Motion to Dismiss Indictment**

Dear Judge Ahto:

As Your Honor may recall, this office represents the defendant, Nicholas Drakos in regard to the above-captioned matter. Kindly accept this letter brief in support of defendant's Motion to Dismiss the Indictment. It is respectfully submitted that the presentation made to the Grand Jury was deficient in that the prosecutor failed to present all elements necessary to establish a prima facie case of promoting gambling in violation of N.J.S. 2C:37-2a and N.J.S. 2C:37-2b(1) as well as N.J.S. 2C:21-25a. As a result, the defense respectfully submits that the indictment against Nicholas Drakos should be dismissed.

## **OVERVIEW**

The defendant in this matter, Nicholas Drakos, is charged with four (4) counts in the indictment, which is the subject of this Motion. The First Count charges Nicholas Drakos with the crime of engaging in bookmaking in violation of N.J.S. 2C:37-2a and N.J.S. 2C:37-2b(1). The Second Count of the indictment charges Nicholas Drakos with conspiracy to promote gambling in violation of N.J.S. 2C:5-2. The Third Count of the indictment charges Nicholas Drakos with money laundering in violation of N.J.S. 2C:21-25b. Each count alleges activity between January 14, 2004 and March 19, 2004. However, Count Three extends the time period to April 1, 2004. Count Four is a drug charge and will not be addressed in this motion.

## **PRESENTATION TO THE GRAND JURY**

During the course of the prosecutor's presentation to the Grand Jury, the State produced one witness, Richard Ricco. Richard Ricco is a detective employed by the Morris County Prosecutor's Office. (T7: 6-12 )

Prior to introducing Detective Ricco, the prosecutor advised the Grand Jury that he was seeking an indictment on the crimes of promoting gambling, N.J.S. 2C:37-2a(2)(b)(1), money laundering, N.J.S. 2C:21-25a, and conspiracy to promote gambling, N.J.S. 2C:5-2 and N.J.S. 2C:37-2a(2)(b)(1). (T3:4-8)

Regarding the charged offenses, the Grand Jury testimony provided the following information. Detective Ricco first identified himself as a member of the Special Enforcement Unit, which investigates gambling, narcotics, prostitution and organized crime. (T8:2-4) He also indicated that as an officer in the Morris County Prosecutor's

Office he has participated in gambling investigations and that he has posed as an undercover individual betting on illegal gambling operations. (T8:11-19)

According to Detective Ricco, he became involved in an investigation of a business run by Nicholas Drakos between January of 2004 and April of 2004. (T10:1-4) He testified that he was investigating an internet website identified as [www.internationalnetcasino.com](http://www.internationalnetcasino.com). (T10:5-9) He testified that this was a functional equivalent of a "wire-room." However, he admitted that any bets were placed via the internet and run out of the country somewhere. (T10:16-T11-2)

In order to place a bet on the internet website, Detective Ricco testified that an individual would have to sign on the website. The individual would then be given an 800 number for customer service. (T12:3-7) After calling customer service, they were then given a user name and password. (T12:8-11) In order to fund the website, Detective Ricco testified that the arrangements for funding would be made with Nicholas Drakos. He further testified that Nicholas Drakos was the equivalent of a controller of the gambling operation. (T12:16-25)

After completing a background investigation, Detective Ricco then assigned Detective Charles Brady to act as an undercover in the investigation. (T14:11-19) Detective Brady then contacted Nicholas Drakos and agreed to meet with him at the Nautilus Diner in Madison, New Jersey. (T15:13-20) During their meeting, Detective Brady gave Nicholas Drakos one hundred dollars (\$100.00) in U.S. currency to fund an online gambling account. (T16:17-20) Mr. Drakos then called a telephone number and requested that an account be opened in the name of "Miller C" using the password "policy." (T16:21-25)

On January 28, 2004, Detective Brady logged in to his account at [www.internationalnetcasino.com](http://www.internationalnetcasino.com). (T17:14-18) He did so with the assistance of Detective Ricco. He then placed a one hundred dollar (\$100.00) bet on the Super Bowl game between the New England Patriots and the Carolina Panthers. (T18:7-10) After the game was over, he checked the site and saw that he had lost his bet. (T18:14-16)

On February 20, 2004, Detective Ricco, Detective Brady and members of the State Police set up additional accounts for other bettors. (T18:17-22) Four additional accounts were set up at that time. (T19:14-16) The login names were “Golf Dog,” “Booze Dog,” “Missing Dog,” and “Pug Dog” (T19:17-19) Detective Brady then contacted Mr. Drakos to advise him that he had set up the new accounts. On Tuesday, February 24, 2004, Detective Brady called Nicholas Drakos to set up another meeting at the Nautilus Diner in Madison, New Jersey. (T20:6-14) Detective Brady requested that Nicholas Drakos transfer money into the accounts, which had been set up. Drakos agreed to wire money from the PNC Bank in Madison, New Jersey. (T20:19-23) After their meeting, Nicholas Drakos and Detective Brady traveled to the PNC Bank and Nicholas Drakos deposited one thousand dollars (\$1,000.00), which had been given to him by Detective Brady into an account owned by Nicholas Drakos. (T20:24-T21:-6) Mr. Drakos provided a wire transfer document to Detective Brady to show that the money had been wired. (T21:11-14)

On Friday, February 27, 2004, Detective Ricco and members of the New Jersey State Police logged onto the website in order to place bets. According to Detective Ricco’s testimony, the following bets were placed: for the login “Golf Dog,” three bets totaling \$200.00; for “Miller C,” three bets totaling \$200.00; for “Booze Dog,” three bets

totaling \$200.00; for “Pug Dog,” three bets totaling \$200.00 and for “Missing Dog,” three bets totaling \$200.00. (T22:18-24) Thus, according to Detective Ricco, there were a total of 15 bets, totaling \$1,000.00, placed by Detective Ricco and members of the New Jersey State Police. (T22:25-T23:2) In order to place those bets, the law enforcement officers logged into the website and placed all the bets via the website. (T23:3-7) There were a total of ten (10) individual bets for a total of \$1,025.00. (T23:14-16)

After those bets were placed, the New Jersey State Police made an application for a Search Warrant as well as an Arrest Warrant. (T23:17-22) Mr. Drakos was arrested at the Newark Airport after having returned from a flight from St. Louis. (T24:2-5) He was searched subsequent to his arrest and in his pocket the police recovered \$1,632.00 in U.S. currency. (T24:6-10)

### **LEGAL ARGUMENT**

There was no evidence presented to the Grand Jury to support the charges and, therefore, all three counts of the indictment should be dismissed.

### **COUNT ONE**

In Count One of the indictment, Nicholas Drakos is charged with "promoting gambling by knowingly engaging in conduct which materially aids any form of gambling activity, by engaging in bookmaking to the extent that he received or accepted in any one day more than five bets totaling more than \$1,000.00, a crime of the Third Degree, contrary to the provisions of N.J.S. 2C:37-2a and N.J.S. 2C:372b(1)."

In reviewing the presentation to the Grand Jury, as evidenced by the transcript of the proceedings attached hereto, there is no evidence that Nicholas Drakos accepted a bet from any individual nor is there any evidence that he received or accepted in one day

more than five bets totaling more than \$1,000.00. In the statute itself under 2C:37-2b(1), a person violates subsection "a" (promoting gambling) by "engaging in bookmaking to the extent he receives or accepts in any one day more than five bets totaling more than \$1,000.00.

A review of the transcript fails to show that at any time did Nicholas Drakos receive or accept in any one day any bet from any individual. (According to Detective Ricco in the transcript on page 17 and continuing on page 18) Detective Brady signed on to [www.internationalnetcasino.com](http://www.internationalnetcasino.com) and placed the bet himself on the 2004 Super Bowl between the New England Patriots and the Carolina Panthers. The other bets that were placed are described in the transcript on page 22 and 23. Detective Ricco and other members of the State Police logged onto the website and placed a total of ten individual bets for a total of \$1,025.00. Again, at no time did Nicholas Drakos receive or accept a bet. The only evidence presented to the Grand Jury was that Nicholas Drakos assisted Detective Brady in setting up an account on a website and in funding the account on the website. This activity, is not prohibited under 2C:37-2 and is legally insufficient to sustain an indictment for the offense of promoting gambling. Therefore, it is respectfully submitted that Count One of the indictment should be dismissed.

### **COUNT TWO**

Count Two of the indictment charges Nicholas Drakos with conspiracy to promote gambling, a third degree crime. Specifically, this count alleges that Nicholas Drakos did agree with others that: "A. One or more of them knowingly would engage in conduct, which would constitute the aforesaid crime(s), or B. One or more of them knowingly would aid in the planning, solicitation or commission of said crime(s), that is:

1. Did promote gambling by knowingly engaging in conduct with (sic) materially aids any form of gambling activity, by engaging in bookmaking to the extent that he received or accepted in any one day more than five bets totaling more than \$1000 (sic), third degree, contrary to the provisions of N.J.S. 2C:37-2a and N.J.S. 2C:37-2b(1)." With regard to the overt act required for conspiracy, County Two alleges that "Nicholas Drakos met with an undercover police officer in order to accept money for illegal gambling."

As stated previously, at no time did Nicholas Drakos accept any bet nor did he accept in any one day more than five bets totaling more than \$1,000.00. The evidence presented to the Grand Jury is simply devoid of any evidence that Nicholas Drakos ever accepted any bet. Again, the only evidence presented to the Grand Jury was that Nicholas Drakos assisted Detective Brady in setting up an account on a website and that at some later point, Detective Brady and members of the New Jersey State Police placed bets on the website. Nicholas Drakos did not assist them in any manner in placing those bets nor did he receive or accept bets from any of those individuals.

As to the overt act, Count Two alleges that Nicholas Drakos met with an undercover police officer in order to accept money for illegal gambling. However, the statute does not prohibit the activity testified to before the Grand Jury. Significantly, there is no allegation in the Grand Jury testimony that the website itself is illegal, nor is there any allegation that being affiliated with the website or placing a bet on the website is illegal. The only testimony presented to the Grand Jury was that Nicholas Drakos assisted Detective Brady in setting up an account at the website and then funding that

account. This activity is not illegal under our statutes. Therefore it is respectfully submitted County Two of the indictment should be dismissed.

### **COUNT THREE**

Count Three of the indictment alleges that Nicholas Drakos did "knowingly transport or possess known to be derived from criminal activity, that is the said Nicholas Drakos did transport or possess U.S. currency in varying denominations totaling less than \$75,000.00, knowing said property to have been derived from criminal activity, contrary to the provisions of N.J.S. 2C:21-25a and/or did engage in a transaction involving property known or which a reasonable person would believe to be derived from criminal activity, with the intent to facilitate or promote the criminal activity, contrary to the provisions of N.J.S. 2C:21-25b, a crime of the Third Degree." The testimony presented to the Grand Jury was that Nicholas Drakos was arrested as a result of an Arrest Warrant issued at the end of the investigation. Nicholas Drakos was arrested at Newark Airport after having returned from a flight from St. Louis. He was then searched by the arresting officers and in his pocket the police recovered \$1,632.00 in U.S. currency.

In reviewing the transcript of this matter, the evidence presented is insufficient to support the assumption that the \$1,632.00 in currency was derived from criminal activity. Mr. Drakos was simply returning from St. Louis and arrested at the airport. At that time, he had \$1,632.00 in U.S. currency in his pocket. There is no reason to assume that the money was derived from criminal activity. In fact, the investigation and the presentation to the Grand Jury failed to show that he was involved in any criminal activity. According to the Grand Jury testimony, Mr. Drakos assisted an individual (who was working in an undercover capacity) to set up an account on a website. Nicholas Drakos did not accept

bets, and he did not receive bets. Furthermore, the website and the activity on the website are not proscribed by our laws. Nicholas Drakos was not involved in any illegal activity that would lead one to believe that the money in his pocket was derived from criminal activity. Therefore, Count Three of the indictment should be dismissed as well.

### **CONCLUSION**

In State v. Holsten, 223 N.J.Super. 578 (App. Div. 1988), the Court reviewed the history of an attack on the indictment based upon the sufficiency of the evidence. It stated as follows:

At least since 1850, indictments have been immune from attack on the basis of the quantity or quality of evidence presented to the grand jury, *see State v. Dayton*, 23 N.J.L. 49, 56-57 (Sup.Ct.1850), although our former Supreme Court in 1943 made clear that an indictment could not survive if it was returned "without having some evidence to support [the] charges." *State v. Donovan*, 129 N.J.L. 478, 483 (Sup.Ct.1943). It was not until 1967, however, that an indictment was actually dismissed based on the lack of adequate proofs before the grand jury. *See State v. Chandler* 98 N.J.Super. 241 (Cty.Ct.1967) (where the only witness was an investigator who did nothing more than deliver the investigative file to the grand jury).

Thus, it is clear in New Jersey that indictments that are not properly supported by sufficient proofs cannot survive and must be dismissed. In this case, the proofs submitted to the Grand Jury are simply insufficient, legally and factually. As a result, the indictment in this matter should be dismissed in its entirety.

For the foregoing reasons, it is respectfully requested that Counts One, Two and Three be dismissed.

Respectfully submitted,

**HANLON, DUNN and ROBERTSON**

By: \_\_\_\_\_  
Gerard E. Hanlon, Esq.

GEH:jl  
Attachments

cc: Melanie Smith, A.P.  
Nicholas Drakos