



support in the trial record. Even if there were evidence of that in the trial record, the scenario posited by the government would show nothing more than Crosby's mere presence at a meeting. As Defendant Crosby has stated before, there is simply not a shred of evidence that he knew about, much less participated in, any conspiracy to buy votes or bribe any legislator.

Looking from the other side of defendants, there is no evidence in the trial record that any defendants other than McGregor knew of any payments to Crosby by McGregor's company. Thus, whatever the evidence shows or does not show, it is clear that there are two separate spheres of alleged conduct.

In a conspiracy case, where there is a multiple conspiracy issue, three relevant factors are: (1) whether there was a common goal, (2) the nature of the scheme, and (3) the overlap of the participants. United States v. Anderson, 326 F.3d 1319, 1327 (11th Cir. 2003). No relevant factor leans in the government's direction - no common goal, no common nature of alleged schemes, and no overlap of participants other than McGregor. The government bears the burden of proving "an 'interdependence' among the alleged co-conspirators in order to prove that the indicted conspiracy was a single unified conspiracy as opposed to a series of smaller, uncoordinated conspiracies. United States v. Coy, 19 F.3d 629, 634 (11th Cir.

1984), citing, United States v. Harrison, 942 F.2d 751, 756-57 (10thCir. 1981).” United States v. Toler, 144 F.3d 1423, 1426 (11th Cir. 1998). The government failed to prove an interdependence or to articulate any reasonable hypothesis as to how the two spheres are related. Accordingly, the prosecution of the conspiracy count fails under a multiple conspiracies analysis.

There is insufficient evidence that Crosby violated or agreed to violate 18 U.S.C. § 666 through a corrupt quid pro quo agreement. It is axiomatic that as a matter of due process, the government is required to prove beyond a reasonable doubt every element of a charged crime. In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). This applies to the requirement of proof of a quid pro quo in this case. It was for the government to prove that there was a quid pro quo. It was not up to Defendant Crosby to prove that there was not.

The government has made the argument that Crosby gave more favorable treatment to McGregor than others. But, there is no evidence whatsoever that Crosby gave McGregor any more favorable treatment than any other authorized person. There is no evidence of a corrupt agreement that Crosby would alter his conduct in regard to drafting bills in exchange for payments, or that the payments were in exchange for his drafting at all. The evidence does not show a quid pro quo agreement to affect

Crosby's actions with regard to drafting gambling legislation. The evidence does not show why Crosby was paid; but more to the point, the evidence plainly does not show that there was any agreement of any sort that Crosby's drafting-related actions would be affected in exchange for payment. It further does not show a corrupt intent. See 18 U.S.C. § 666(a)(2) (requiring proof that offer or payment was made "corruptly"). Because of that, the conspiracy count, the bribery count and the honest services counts relating to Crosby must go.<sup>1</sup>

Based upon the foregoing, Defendant Joseph R. Crosby urges the entry of a judgment of acquittal on all counts relating to him.

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<sup>1</sup> In order to support a conviction based upon an aiding and abetting theory, there must be proof beyond a reasonable doubt that the defendant associated himself with a criminal venture and that he committed some act which furthered the crime. United States v. Hansen, 262 F.3d 1217, 1236 (11th Cir. 2011). There is no evidence whatsoever the support Crosby's conviction of honest services charges contained in counts 26, 28, 29, 30, 31, 32, or 33). Moreover, because there is insufficient evidence support the conspiracy charge no Pinkerton liability would attach.

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CERTIFICATE OF SERVICE

I hereby certify that I have on this the 29th day of July, 2011, electronically filed this document with the Clerk of the Court using the CM/ECF system which will send notification to all counsel of record.

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