

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

UNITED STATES,

Plaintiff,

v.

JARRELL W. WALKER, JR.,

Defendants.

CASE NO. 2:10-cr-00186-MHT-WC

**DEFENDANT JARRELL W. WALKER, JR.'S MOTION FOR JUDGMENT OF ACQUITTAL
AND RESPONSE TO THE UNITED STATES' SUBMISSION REGARDING THE
SUFFICIENCY OF EVIDENCE ON COUNT ONE**

Defendant Jarrell W. Walker, Jr. respectfully moves the Court, pursuant to Federal Rule of Criminal Procedure 29(A), for entry of a judgment of acquittal on Counts One (Conspiracy), Eight (Federal Programs Bribery), and Twenty-Three through Thirty-Three (Honest Services Fraud) of the Indictment (Doc. No. 3) filed against him in this action,¹ and in stating the grounds for the judgment requested, Mr. Walker responds to the United States' *Submission to the Court Regarding the Sufficiency of Evidence as to Count One of the Indictment* (Doc. No. 1521) ("Evidentiary Submission").

I. PRELIMINARY STATEMENT

Despite the ample opportunity afforded the Government to develop its case against Mr. Walker, the evidentiary record fails to establish *prima facie* cases of conspiracy (Count One), federal programs bribery (Count Eight), and honest services bribery (Counts Twenty-Three

¹ Mr. Walker's present motion is made without prejudice to his right to relief from the Indictment pursuant to his joinder of the dispositive motions filed under seal, respectively, by Defendants Geddie and Means on June 2 and 5, 2011.

through Thirty-Three) against Mr. Walker.² The Government has failed to establish that Mr. Walker was a member of the alleged conspiracy and that he committed the substantive offenses of bribery alleged in Counts Eight and Twenty-Three through Thirty-Three.

The prosecution's Evidentiary Submission identifies the following factual bases – purportedly extrapolated from the trial record – for the conspiracy and bribery charges lodged against Mr. Walker:

Defendant Coker was instrumental in securing defendant Preuitt's vote, which was critical to passing SB380 in the Alabama Senate. *According to Massey, although he worked closely with defendants Walker and Smith, as well as Jennifer Pouncy and Gilley, to secure defendant Preuitt's vote, [7/28/2011 Trial Tr.] at 176, defendant Coker spearheaded the effort. Id. at 178.*"

* * *

Defendant Coker. . .told Massey that he (*Coker*) *has confirmed the illicit commitments Massey, defendant Walker, and Gilley made to defendant Preuitt. Id. at 178.*³

* * *

[Defendant Preuitt] held out. . .before committing to vote in favor of the bill—and *only after securing offers of things of value from* defendant McGregor, *Defendant Walker*, defendant Smith, and Defendant Coker, as well as Pouncy, Gilley, and Massey. 7/8/2011 Trial Tr. At 176, 178, 180. . . .Three weeks later, on March 24, 2010, after Massey, Gilley, and *defendant Walker had promised defendant Preuitt things of value*, including significant campaign support (in the form of contributions and the appearance of prominent country music stars), defendant Preuitt specifically asked Pouncy if Gilley's and Massey's commitments would

² The Court reserved ruling on Defendants' Federal Rule of Evidence 801(d)(2)(E) objections until the conclusion of the Government's case-in-chief, thereby permitting the conditional presentation of out-of-court statements of purported co-conspirators and postponing the determination of the preliminary issue of the existence of the conspiracy as to Mr. Walker. The Government having rested, Defendant Walker requests that hearsay statements of alleged co-conspirators be excluded in their entirety. Mr. Walker hereby incorporates by reference the contentions and authorities set forth in his *Memorandum of Law in Support of Oral Objections to the Testimony of Special Agent George E. Glaser and Response to the United States' Memorandum of Law Regarding the Applicability of Bruton to Glaser Testimony* (Doc. No. 1488), Section B; *Memorandum of Law In Response to the Court's Order Regarding Diez* (Doc. No. 1500); and Defendant Geddie's *Response to the United States' Submission to the Court Regarding the Sufficiency of the Evidence as to Count One of the Indictment* [Doc. No. 1521] (Doc. No. 1522) with respect to the admissibility of co-conspirator testimony.

³ Technically, Mr. Coker is not competent to render an opinion and/or legal conclusion unless properly qualified in this matter. *See* Fed. R. Evid. 701 – 704.

still be honored if SB380 did not pass in the Alabama House of Representatives. 7/19/2011 Trial Tr. at 55.⁴

* * *

Defendant Walker, Gilley's former spokesperson at Country Crossing, was also intimately involved in the corrupt efforts to passing (sic) pro-gambling legislation and specifically SB380. . . .According to Massey. . .it was defendant Walker's idea to purchase a significant number of trucks from defendant Preuitt's dealership. 7/8/2011 Trial Tr. At 181. 198. Later, prior to the vote on SB380 on March 30, 2010, defendant Walker told Pouncy that they should try to buy defendant Preuitt's vote by purchasing vehicles from his dealership and conducting a poll for his campaign. 7/19/2011 Trial Tr. 50. During her testimony, Pouncy also confirmed her belief that defendant Walker conspired with her to commit bribery. 7/19 at 78. As such, although defendant Walker did not play as central a role in the conspiracy, the evidence nonetheless establishes that he was more than willing to do whatever it took to pass SB380.

United States' Evidentiary Submission at 8-9, 11, 17-18 (emphasis added).

As a consolidated statement of the evidence offered to prove the charges in the Indictment, even read in the light most favorable to the Government, the United States' Evidentiary Submission exposes more deficiencies of the Government's case than reasonable proof against Mr. Walker.⁵

II. ARGUMENT

1. Legal Standards⁶

⁴ As discussed more fully below, omissions in speech and conduct provide some evidence of the absence of an agreement. Cf. *Siegelman*, 640 F.3d at 1172 (citing *Evans v. U.S.*, 504 U.S. 255, 274 (1992), for proposition that an explicit agreement may be inferred from an official's words and acts); cf. Exhibit J-073.

⁵ Counts 23-33, Honest Services Fraud, also charge Mr. Walker. There is no evidence that Mr. Walker knew of payments made to Defendant Ray Crosby. Further, if the conspiracy count against Mr. Walker fails, so do the honest services counts (23-33).

⁶ The well-settled law of conspiracy provides that a conspiracy is an agreement by two or more people to commit an unlawful act. To prove the existence of a conspiracy beyond a reasonable doubt, the Government must establish that: (1) two or more persons in some way agreed to attempt to accomplish a shared and unlawful end or plan; (2) that the defendant knew of the unlawful purpose of the plan and willfully joined in it; (3) during the course of the conspiracy, one of the conspirators knowingly committed at least one overt act as described in the Indictment; and (4) the overt act was committed at or about the time alleged and with the purpose of carrying out the or accomplishing some objective of the conspiracy.

The Government simply cannot establish that Mr. Walker knew others (allegedly) had an unlawful plan to secure Senator Preuitt's vote on SB 380.

Even further, the law defines an overt act as any transaction or event, even one that may be entirely innocent when viewed alone, that a conspirator commits to accomplish some objective of the conspiracy. Controlling authorities have further clarified that even if one is present at the scene of an event or is merely associating with certain people and discussing common goals and interests does not

Federal Rule of Criminal Procedure 29(a) provides that the Court “must enter a judgment of acquittal of any offence for which the evidence is insufficient to sustain a conviction.” *Id.*; see also *United States v. Kottwitz*, 614 F.3d 1241, 1264 (11th Cir. 2011).

2. The Government Failed to Establish Mr. Walker’s Membership in the Alleged Conspiracy.

Notwithstanding its contention that Mr. Walker “willingly participated in the alleged conspiracy to secure passage of pro-gambling legislation through bribery,” Evidentiary Submission 17, the Government failed to establish Mr. Walker’s agreement to form and/or join the alleged conspiracy. The Government offered two theories of Mr. Walker’s participation in the illicit activities of the alleged conspiracy: (1) his offer to buy and/or purchase of vehicles from Senator Preuitt in exchange for the Senator’s favorable vote on Senate Bill 380, and (2) Mr. Walker’s purportedly improper transfer of valuable things to Senator Preuitt -- in the form of a poll offered to the Senator’s re-election campaign – to secure his vote in favor of SB 380. See Indictment ¶¶ 34, 92, 96; United States’ Evidentiary Submission 17-18. Yet the evidence offered by the Government fails to establish either Mr. Walker’s membership in the alleged conspiracy or an explicit agreement between Mr. Walker and any public official to exchange valuable things for the official’s public performance. See, e.g., *Siegelman*, 640 F.3d at 1170-72 (citing *McCormick v. United States*, 500 U.S. 257, 273 (1991)).⁷

Because conspiracy charges require proof of an agreement to pursue an unlawful object (or a lawful object by unlawful means), the Government cannot establish Mr. Walker’s

constitute proof of a conspiracy. This notion is amplified by the evidence and lack thereof in this case as it relates to Mr. Walker as an alleged member of the charged conspiracy. See generally *United States v. Siegelman*, 640 F.3d 1159 (11th Cir. 2011).

⁷ Application of the *Siegelman* standard is particularly appropriate where, as here, the conduct alleged to constitute bribery involves the proposed contribution of a strategic poll to a legislator’s re-election campaign. See United States’ Evidentiary Submission 17-18; Exhibit J-073 (Transcript of telephone conversation between Jarrod Massey and Jay Walker on March 24, 2010), at 5:3-13 (reporting offer to conduct poll with David Mowery and expressing uncertainty as to whether Senator Preuitt would vote favorably on Senate Bill 380 despite poll).

membership in the conspiracy simply by showing that he committed acts for which he could incur criminal liability for the substantive bribery offenses charged in Counts Eight and Twenty-Three through Thirty-Three. *Cf. Pinkerton v. U.S.*, 328 U.S. 640, 643 (1946). This is particularly true where, as here, the evidence facially suggestive of Mr. Walker's offer to give Senator Preuitt a "thing of value" – the proposed poll – necessarily negates an inference that he reached an explicit *quid pro quo* agreement with the Senator concerning his vote on SB 380. As Mr. Walker described his March 23, 2010 conversation with Senator Preuitt to Mr. Massey on March 24, 2010:

And I said let me, let me do a poll so I, so Mowery and I can give you a scientific strategy and I said I'll do the poll. And uh, and of course I said all I need is your vote; so Mowery calls me last night and said, said that he called him and said to, to run with it. Now I'm assuming the mother fucker wouldn't call me and tell me to pay for the goddamn poll and he ain't gone be with us. But that's just me assuming.

Exhibit J-073 (Transcript of telephonic conversation between Jarrod Massey and Jay Walker dated March 24, 2010), at 5:3-13.

Moreover, because the law requires that to offer or pay a bribe to a public official, Mr. Walker offer or transmit a thing of value pursuant to an explicit if not express *quid pro quo* agreement with the target official, i.e., Senator Preuitt, to agree, Mr. Walker must have agreed to offer or make payment in exchange for official act, i.e., favorable vote on SB 380. *Cf. Siegelman*, 640 F.3d at 1170 (citing *McCormick v. United States*, 500 U.S. 257, 273 (1991), for proposition that only if "payments are made in return for an explicit promise or undertaking by the office to perform or not perform an official act, are they criminal").

The Purported Offer to Purchase Vehicles From Senator Preuitt

The record does not establish that Mr. Walker actually agreed with anyone else to offer to buy and/or purchase vehicles from Senator Preuitt in exchange for his vote on SB 380. The

Government contends that Mr. Walker was a member of the alleged conspiracy because, among other things, he purportedly suggested to Ronnie Gilley, Jarrod Massey, and Jennifer Pouncy that they offer to buy and/or buy vehicles from Senator Preuitt in exchange for his vote on SB 380. *See* United States' Evidentiary Submission at 17-18. Yet the prosecution has not proven that any established member of the conspiracy, e.g., Mr. Gilley, Mr. Massey, or Ms. Pouncy, understood Mr. Walker to be seriously suggesting that an offer be extended to Senator Preuitt or that any of the three agreed to do so.

In fact, the testimony of all three witnesses unequivocally confirms that no such offer to buy vehicles was made to Senator Preuitt and/or a sale concluded. Mr. Gilley testified that his discussions with Mr. Walker concerning the purchase of vehicles from Senator Preuitt were "a joke," and that no such offer was extended. *See* Exhibits J-184.⁸ Mr. Massey similarly testified that Mr. Walker did not offer to purchase vehicles from Senator Preuitt.

⁸ Before concluding a roughly twenty (20) minute telephone call with Mr. Walker on March 21, 2010, Mr. Gilley, as an afterthought, remarked

GILLEY: Yeah, yeah. That, that, that pussy won't even call me back. He won't return a phone call or nothing. Randy Owen's gonna call him, too. He's gonna let him know, you know, I understand you worried about this upcoming election but if you don't do what's right for the people of Alabama you gonna have good reason to be.

WALKER: What I'm gonna talk to Preuitt about tomorrow, I am gonna look at a truck while I'm there, I mean I don't need one but I will buy one if I have to.

GILLEY: Well you, you, you can give me a F, one of them big trucks, I need one anyway, them F250's or whatever the hell it is.

WALKER: (laughs) Yeah.

GILLEY: I need one, and we, we, we, we are gonna have to get a fleet for the construction company when we get out the bog cuz. . .

WALKER: Yeah.

GILLEY: My trucks, my, my trucks getting old.

WALKER: Well, I'm gonna, I'm gonna talk to him about trucks but I'm also, also got a, uh, notebook of all the campaigns that I've done in the past.

Exhibit J-184 (Transcript of telephonic conversation between Ronald Gilley and Jay Walker dated March 21, 2010), at 7:15-8:1. Two days later, after Mr. Walker's meeting with Senator Preuitt at the Statehouse,

Contemporaneous communications between Mr. Massey and Ms. Pouncy demonstrate that neither agreed that Mr. Walker should visit Senator Preuitt in Talladega, Alabama on March 22, 2010. The March 22, 2010⁹ conversation involving Mr. Massey and Ms. Pouncy is replete with references to Mr. Gilley's last minute substitution of Mr. Walker for himself to attend a face to face meeting with Senator Preuitt:

MASSEY: Okay, yeah when I got that thing last night I was like what the fuck is going on. I mean, they, *they just can't help themselves screwing up stuff*. I mean it's just like. . .

POUNCY: I know.

MASSEY: I mean they just want to jump ahead of themselves and. . .

* * *

MASSEY: . . .I was. . .kinda like hey man I don't really think he really gives a shit about you showing up and talking to him and *quite frankly he and Jennifer ain't gone be having a conversation that's worth two cents with you sitting right there with them*.

POUNCY: Yeah, and uh, I said and *Preuitt's not gonna talk to you about anything* that I've just told you about the Barron and all them. He's not gonna talk about that.

MASSEY: Right.

POUNCY: *'Cause he doesn't know you*. I said so um, I don't know, I can't. I don't know if he, you know, needs to not go up there or I don't

Mr. Gilley and Mr. Walker engaged in a similar exchange which elicited a similar explanation from Mr. Gilley on the stand.

On March 23, 2010, the day that Mr. Walker met with Senator Preuitt at the Statehouse in Montgomery, Alabama and offered to conduct a poll, Mr. Gilley, as an afterthought to the remainder of his conversation with Mr. Walker said:

GILLEY: Do me a favor.

WALKER: Yes sir.

GILLEY: Call Senator Preuitt right now and tell him you just hung up the phone with me?

WALKER: Yeah.

GILLEY: I've been with George Jones all day, and we gonna be bringing George Jones up there to the dealership next week to buy trucks --

WALKER: (Laughs) All right, I'll do it friend."

See Exhibit Walker 3291, J-193 (Transcript of telephone call between R. Gilley and J. Walker dated March 23, 2010).

⁹ This was the day before Mr. Walker travelled to Montgomery to meet with Senator Preuitt at the statehouse (on March 23, 2010).

know what to do. *But he's pretty adamant about going I guess 'cause Ronnie told him to go. So, but if I can't get in touch with Preuitt you know, if he won't call me back then you know neither one of us are going I guess.*

MASSEY: *. . . I mean I have no problem calling Ronnie or Jay and saying hey man you gonna make this worse. I mean if I knew you had a meeting already I'd just do it right now. Um. . .*

* * *

MASSEY: *. . . Just, you might want to follow back up with Jay and say hey, I just talked to Jarrod but the bottom line is stand down and let me get this going first and then um stand down. But Jarrod is of the mind we're gonna piss him off with all these multiple calls and meetings and at the end of the day he really don't know you and you know that's not anything in deference or anything negative toward you. He just don't know you.*

* * *

MASSEY: *. . . I would do this. . . But I mean we're gonna make this situation worse by trying to overwork ourselves here.*

* * *

MASSEY: *Just sit tight and you know you just say I said it.*

* * *

MASSEY: *. . . I mean we gonna piss him off with all this damn meeting shit and everybody getting up there and nobody know what the hell they're doing. . .*

POUNCY: *. . . But you know I told, pretty much told Jay I said look, you know, Senator Preuitt thinks he's meeting with Ronnie not you. I mean I did. I hope that don't piss anybody off. I said I don't mean to be ugly to you or talk you down or whatever but Ronnie really needs to meet with Senator Preuitt and he can't meet with him today. . .*

Exhibit J-053 (Transcript of telephonic conversation between Jarrod Massey and Jennifer Pouncy dated March 22, 2010), at 3:24-27, 32-33; 4:6-17, 21-38; 5:41-6:5; 6:43-7:5; 7:15-18, 25-34 (emphasis added); *cf.* Exhibit J-073. Jennifer Pouncy conceded that she had no personal knowledge of an offer made by Mr. Walker to Senator Preuitt, but confirmed that Mr. Walker did not mention the purchase of vehicles from Senator Preuitt during their meeting at Dirk's Restaurant on March 23, 2010 shortly after Mr. Walker's meeting with Senator Preuitt at the Statehouse.

The Government's best effort to establish Mr. Walker's membership in the conspiracy was made during its direct examination of Jennifer Pouncy. As paraphrased by the Government,

Ms. “Pouncy also confirmed her belief that defendant Walker conspired with her to commit bribery. Tr. 7/19 at 78.” The Government conspicuously failed to question Ms. Pouncy further as to any agreement between she and Mr. Walker or concerning her knowledge of any illicit agreement between Mr. Walker and any other purported member of the charged conspiracy to attempt to accomplish an unlawful plan, or that Mr. Walker even knew of an unlawful plan.

The vehicle scenario that the Government attempts to bootstrap as a thing of value offered to Senator Preuitt in exchange for his vote on Senate Bill 380 also failed through the testimony of Jennifer Pouncy. Ms. Pouncy testified that trucks were mentioned, even as late as immediately prior to Mr. Walker’s Statehouse meetings with Senator Preuitt on March 23, 2010. The Government, in contravention of its attempt to establish that Senator Preuitt had been offered vehicle purchases as things of value, elicited testimony from Ms. Pouncy that although vehicles were mentioned by Mr. Gilley, Mr. Massey and Mr. Walker, she had no personal knowledge that the vehicle offer was ever made to Senator Preuitt. On cross-examination by Mr. Walker, Ms. Pouncy admitted that she had lunch with Mr. Walker at Dirk’s Restaurant after his meeting with Senator Preuitt at the statehouse on March 23, 2010, and during their lunch Mr. Walker only recounted his offer to assist Senator Preuitt’s campaign with a strategic poll (which was never performed) and that Mr. Walker never mentioned purchasing any vehicles from Senator Preuitt.

Jarrold Massey testified that he entire truck scenario was banter, that he used the word transportation needs as code to Ronnie Gilley (similar to the Beason offer) and he failed to mention vehicle purchases were even conveyed to Senator Preuitt.

Ms. Pouncy testified that she had no personal knowledge that trucks were mentioned to Senator Preuitt by Mr. Walker, Mr. Massey or Mr. Gilley.

The Proposed Poll for Preuitt Re-Election Campaign

The Government further alleges that Mr. Walker offered to conduct a poll for Senator Preuitt to buy the Senator's vote on Senate Bill 380. *See* United States' Evidentiary Submission at 19. The evidence regarding the proposed poll similarly controverts any inference that Mr. Walker agreed to conduct a poll for Senator Preuitt's campaign *in exchange for* his vote. On March 23, 2010, during his meeting with Senator Preuitt at the Statehouse, Mr. Walker offered to conduct a poll for Senator Preuitt, along with David Mowery.

The poll mentioned, as acknowledged by Ms. Pouncy, was offered by Mr. Walker as assistance for Senator Preuitt's campaign, on which he would assist David Mowery.¹⁰ The uncontroverted evidence is that Mr. Walker, along with Mr. Mowery,¹¹ were willing to conduct a poll.¹² Even Jarrod Massey discussed a potential poll with Mr. Mowery. *See* Government Exhibit J-784. Mr. Massey testified on direct examination that Mr. Walker would be willing to assist Mr. Mowery on Senator Preuitt's campaign as a "value add." Mr. Massey's characterization of Mr. Walker's proposed participation in the poll flatly contradicts the Government's assertion that Mr. Walker was offering to do a poll for Senator Preuitt in exchange for a favorable vote by Senator Preuitt on SB 380. *See* United State's Submission Regarding the Sufficiency of Evidence at 18.

The evidence further discloses that Mr. Walker disclosed the offer to both Jarrod Massey and Jennifer Pouncy on March 23, 2010. There is no evidence of a *quid pro quo* agreement between Mr. Walker and Senator Preuitt. At most, as reflected in Mr. Walker's report to Mr. Massey before concluding an extended discussion on March 24, 2010:

¹⁰ Mr. Mowery sought to be hired by Senator Preuitt as his campaign manager.

¹¹ Mr. Mowery has not been charged in connection with the Indictment filed in this case nor has he ever referenced as an unindicted co-conspirator.

¹² Mr. Massey and Ms. Pouncy confirmed that "Mr. Walker and [Mr.] Mowery were going to do the poll for the Preuitt Campaign. *See* Exhibit J-074. Mr. Massey, in a March 26, 2010 conversation with Mr. Walker, said to Mr. Walker that Mowery's on board. *See* Exhibit J-085.

And I said let me, let me do a poll so I, so Mowery and I can give you a scientific strategy and I said I'll do the poll. And uh, and of course I said all I need is your vote; so Mowery calls me last night and said, said that he called him and said to, to run with it. Now I'm assuming the mother fucker wouldn't call me and tell me to pay for the goddamn poll and he ain't gone be with us. But that's just me assuming.

Exhibit J-073 (Transcript of telephonic conversation between Jarrod Massey and Jay Walker dated March 24, 2010), at 5:3-13.

Ms. Pouncy testified that that Mr. Walker suggested that they offer to conduct a poll for Senator Preuitt to "buy" his vote on SB 380 but did not express her agreement with his proposal. The Government's arguably most compelling attempt to establish the existence of a *quid pro quo* agreement between Mr. Walker and Senator Preuitt is therefore woefully insufficient. One that has secured a vote in exchange for an offer to do a poll would not have to assume that the legislator for whom he contemplated performing said poll was with him on the legislation in question. Yet Ms. Pouncy testified that she learned for the first time that Senator Preuitt would vote in favor of SB 380 on March 30, 2010, the day of the vote, and only after Senator Preuitt had told the Government that he was a "yes" vote.

Senator Preuitt's communications with Ms. Pouncy regarding the commitments he received from Mr. Massey and Mr. Gilley on March 24, 2010 indicated that he did not understand the offer expressed to him by Mr. Walker on March 23 to have proposed a *quid pro quo*. See United States' Evidentiary Submission at 12. Mr. Massey indicated his later awareness of Mr. Walker's offer to Senator Preuitt, but described the offer "added value," rather than having been framed as a *quid pro quo*. See Exhibit J-074. Mr. Massey further testified that the poll offered by Mr. Walker was never performed. Ms. Pouncy testified that Mr. Walker suggested to her that they offer to conduct a poll to buy Senator Preuitt's vote on SB 380, but there is no evidence to suggest that Ms. Pouncy agreed with Mr. Walker to do so.

The Government's arguably most compelling attempt to establish the existence of a *quid pro quo* agreement between Mr. Walker and Senator Preuitt is therefore woefully insufficient. One that has secured a vote in exchange for an offer to do a poll would not have to assume that the legislator for whom he contemplated performing said poll was with him on the legislation in question. Yet Ms. Pouncy testified that she learned for the first time that Senator Preuitt would vote in favor of SB 380 on March 30, 2010, the day of the vote, and only after Senator Preuitt had told the Government that he was a "yes" vote.

Insufficiency of Alleged Agreement(s) with Established Conspirators

The United States' Evidentiary Submission submits that Ms. Pouncy believed Mr. Walker conspired to bribe Senator Preuitt. But Ms. Pouncy's reported belief is not legally sufficient to establish an agreement between Mr. Walker and anyone to bribe an official for a vote on SB 380. Ms. Pouncy's belief that Mr. Walker "conspired" with her constitutes a legal conclusion rather than competent factual bases for the conspiracy charge against Mr. Walker. Moreover, Ms. Pouncy's subjective belief is insufficient to establish the existence of an objective agreement between Mr. Walker and Ms. Pouncy for purposes of conspiracy law. Ms. Pouncy's claimed belief is definitively refuted by Ms. Pouncy's specific testimony regarding an offer or payment of things of value in exchange for a vote on SB 380. Ms. Pouncy testified that she lacks personal knowledge regarding any proposal to purchase trucks from Senator Preuitt, and warned Mr. Walker to "stand down" from his pursuit of Senator Preuitt on March 22, 2010. Ms. Pouncy could not agree with Mr. Walker to offer to conduct a poll for Senator Preuitt's campaign in exchange for his vote on SB 380 when Ms. Pouncy should have been aware that neither Mr. Walker nor Senator Preuitt considered the offered poll a commitment made in exchange for the Senator's vote. *See* United States' Evidentiary Submission at 18.

The Government has offered no additional evidence that Mr. Walker agreed to any *quid pro quo* agreement made by any other person to any Alabama state legislator in connection with SB 380. The record fails to establish that Mr. Walker had any motive to blindly agree to the illicit conduct of any third party to secure the passage of SB 380.

Contrary to the charge in the Indictment, Mr. Walker was not an employee of Ronnie Gilley or Country Crossing. Mr. Gilley conceding during cross-examination that he did not provide Mr. Walker with a Form W-2 or Form 1099, paid no insurance for the benefit of Mr. Walker, and that Mr. Walker was onsite periodically as he lived in Lannett, Alabama. The evidence demonstrates that Mr. Walker was tasked to Country Crossing as a consultant by Dr. Robert Wright and Ted Graham, via a consulting agreement between Ronnie Gilley (and/or one of the entities he controlled) and Express Holdings. Dr. Wright was an investor in Country Crossing. Ted Graham, and Specialized Services, Inc., was the contractor who constructed the infrastructure of the Country Crossing facility.

Despite the Government's efforts, they fall short of establishing that Mr. Walker was an employee of Country Crossing. Mr. Gilley admitted during his testimony that Mr. Walker was paid by Express Holdings through April 2010. Mr. Walker presented Mr. Gilley with a consulting agreement for MMV, a Walker company, to continue serving as a consultant. *See* Walker Exhibit 3910. Mr. Gilley acknowledged that he never executed the document proposed by Mr. Walker.

Mr. Gilley testified that he paid Express Holdings two payments of \$166,667.67, and that of those funds, Mr. Walker was paid \$10,000 per-month invoices by Express Holdings for the months of October 2009 through April 2010. *Cf.* Exhibit J-184 at 5:19-22 (Mr. Walker advises Mr. Gilley that he is being paid from an account "they" budgeted for me"). Contrary to the Government's desired inference, even Phil Harrod only secured some financial documents

regarding Express Holdings. Government remains unable to prove that the money Mr. Gilley transferred to Express Holdings was used to pay Mr. Walker.

Even post-April 2010 payments of \$10,000 and \$2,000 do not provide any proof that Mr. Walker was an employee of Ronnie Gilley. At most, even in the face of the unexecuted contract between Gilley and MMV, *see* Walker Exhibit 3910, Mr. Walker stayed on for a couple of additional months in a consultant capacity.

Furthermore, the Government has not established any knowledge on the part of Mr. Walker of the illicit agreement and/or acts in furtherance thereof committed by those with whom he was loosely affiliated in his work on SB 380. In fact, the April 1, 2010 conversation between Mr. Walker and Mr. Massey (Exhibit J-775) Mr. Massey disavows wrongdoing to Mr. Walker after Mr. Massey had been contacted by the FBI. Mr. Massey, in fact, attempted to hide his illicit conduct from Mr. Walker. Mr. Massey's effort to prevent Mr. Walker's discovery of his illicit conduct belies the Government's allegation that Mr. Walker was a member of the alleged conspiracy. The March 22, 2010 conversation between Mr. Massey and Ms. Pouncy similarly reflects that Senator Preuit would similarly refrain from discussing anything "worth two cents" with Ms. Pouncy in Mr. Walker's presence because he did not know him. *See* Exhibit J-053 (Transcript of telephonic conversation between Jarrod Massey and Jennifer Pouncy dated March 22, 2010).

Indeed, there is no competent evidence that Mr. Walker agreed with any established members of the alleged conspiracy to offer any other legislator any thing of value in exchange for a favorable vote. *Cf.* Exhibit J-059. In another conversation between Mr. Massey and Mr. Walker, a March 22, 2010 conversation intercepted by Title III wiretap, Mr. Walker responded to a comment by Mr. Massey concerning Mr. Milton McGregor that "[h]ey, we gotta dump on, who, who's at the core of the damn problem it's him brother." *See* Exhibit J-059 (Conversation

between J. Walker and J. Massey dated March 22, 2010), at 7:30-47. Yet the Government's conspiracy case hinges on alleged actions of the defendant purportedly in furtherance of the alleged conspiracy at this precise time.

III. CONCLUSION

In light of the foregoing, Mr. Walker respectfully requests that the Court enter a judgment of acquittal in his favor on Counts One, Eight and Twenty-Three through Thirty-Three of the Indictment.

Dated: July 26, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HERBY CERTIFY that the Motion for Judgment of Acquittal was served via ECF Filing on all counsel of record listed below this 26th day of July, 2011.

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CASE NO. 2:10-CR-00186-MHT

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