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 SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR JUDGMENT OF ACQUITTAL

Defendant Jarrell W. Walker, Jr. respectfully submits this supplemental memorandum of law in support of his *Motion for Judgment of Acquittal and Response to the United States' Submission Regarding the Sufficiency of Evidence on Count One* (Doc. No. 1544), filed on July 26, 2011, and in response to the Court's inquiries regarding the legal standards applicable to Mr. Walker's purportedly unlawful offer to bribe Senator James Preuitt during the trial of this matter on July 29, 2011.

Mr. Walker contends that the evidence offered by the Government at trial is legally insufficient to sustain his conviction of any of the charges lodged against him, and that he should be acquitted of same. *See* Fed. R. Crim. P. 29(a).[1] More specifically, the trial record, even considered in the light most favorable to the Government, suffices only to render Mr. Walker's guilt of offering a bribe to Senator Preuitt "possible," at best probable. *Cf.* Exhibit J-073 (Transcript of telephonic conversation between Jarrod Massey and Mr. Walker dated March 24, 2010).

[1] The Indictment (Doc. No. 3) charges Mr. Walker with Counts One (conspiracy), Eight (federal programs bribery) and Twenty-Three through Thirty-Three (honest services fraud).

Whether the Government has adduced sufficient evidence to sustain the charges against Mr. Walker is determined by whether "a rational trier of fact could have found proof of guilt of each essential element of the crime charged beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 324, 99 S.Ct. 2781, 2791 (1979); *see also United States v. Glenn*, 312 F.3d 58, 63 (2d Cir. 2002) (deriving standard for review of conviction challenged based on sufficiency of evidence from *Jackson v. Virginia,* which inquires whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" based on the evidence introduced at trial); *United States v. Williams*, 390 F.3d 1319, 1323 (11th Cir. 2004); *Cosby v. Jones*, 682 F.2d 1373, 1376-77 (11th Cir. 1982) (observing, in applying *Jackson* test, that "although in testing the sufficiency of the evidence we are required to disbelieve all of the defense testimony, the guilty verdict may not stand unless the state has proven its case with sufficient evidence to allow a reasonable juror to find guilt beyond a reasonable doubt.").

The Eleventh Circuit in *Cosby* explained that "the *Jackson* standard is a 'more stringent test' than a 'more likely than not' standard." *Id*., 682 F.2d at 1379. "How much more stringent is uncertain, but it is at least clear that if the reviewing court is convinced by the evidence only that the defendant is more likely than not guilty then the evidence is not sufficient for conviction." *Cosby*, 682 F.2d at 1379; *see also United States v. Hunt*, 526 F.3d 739, 746 (11th Cir. 2008) (where evidence is in equipoise, a jury could not find beyond a reasonable doubt."). In determining the sufficiency of the evidence to sustain a conviction of the offense(s) charged, the Court should consider the record as a whole, *Jackson*, 443 U.S. at 319; *Cosby*, 682 F.2d at 1376-77, 1379; *Glenn*, 312 F.3d at 63, and view the evidence in the light most favorable to the prosecution. *Id*. When deciding a Rule 29 motion for judgment of acquittal, the Court must also view the evidence in the light most favorable to the prosecution and draw all reasonable inferences in favor of the Government. The Court must view the evidence, both direct and

circumstantial, as well as all reasonable inferences from that evidence, in the light most favorable to the prosecution. *United States v. Dean*, 59 F.3d 1479, 1484 (5th Cir. 1995).

"The evidence need not exclude every reasonable hypothesis of innocence." *Dean*, 59 F.3d at 1484. Indeed, the jury "is free to choose among reasonable constructions of the evidence," *United States v. Hernandez-Bautista*, 293 F.3d 845, 853 (5th Cir. 2002). However, appellate courts "must reverse a conviction if the evidence construed in favor of the verdict '*gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence of the crime charged*." *Dean*, 59 F.3d at 1484 (citing *United States v. Jaramillo*, 42 F.3d 920, 923 (5th Cir. 1995) (quoting *United States v. Menesses*, 962 F.2d 420, 426 (5th Cir. 1992)) (emphasis added); *Hernandez-Bautista*, 293 F.3d 845, 853 (5th Cir. 2002) ("Evidence that when viewed in the light most favorable to the government "supports only a finding of a *possible* connection between the defendant, co-defendants and the evidence will not sustain a conviction.").[2]

The evidence introduced into the trial record reflects Mr. Walker's professional activities as a political consultant and his interest in working on Senator Preuitt's re-election campaign. His desire to expand his business makes it at least equally likely that that is why Mr. Walker

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[2] Where "the evidence supports a theory of innocence at least as much as a theory of guilt and of the crime charged," a trial court's decision to grant an acquittal is not erroneous. *Hernandez-Bautista*, 293 F.3d at 854-55. In *Hernandez-Bautista*, the Court concluded that the government

> failed to establish that Hernandez-Bautista became associated with, participated in, or somehow acted to further the possession and distribution of marijuana that the agents testified they found. . .While actual physical possession is not necessary to convict for aiding and abetting, a defendant must share in the intent to commit the offense as well as play an active role in its commission.

Hernandez-Bautista, 293 F.3d at 853-5 (citations omitted).

made the offer to Senator Preuitt to conduct a poll for his campaign and furnishes an alternate explanation for the offer. The evidence offered by the Government brings the case against Mr. Walker into – at best – equipoise[3] and this is legally insufficient to sustain his conviction.

III. CONCLUSION

In light of the foregoing, Mr. Walker respectfully requests that the Court enter a judgment of acquittal in his favor on all counts of the Indictment.

Dated: July 29, 2011

Respectfully submitted,

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[3] *Cf.* Testimony of Jennifer Pouncy, July 20, 2011, regarding her conversations with Senator Preuitt on March 24, 2011.

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 29th day of July, 2011.

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