UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	CRIMINAL NO. 09-335 (RJL)
	:	
v.	:	
	:	
AMARO GONCALVES, *et al.*,	:	
	:	
Defendants.	:	
	:	

GOVERNMENT'S RESPONSE TO DEFENDANTS'
RENEWED MOTIONS FOR JUDGMENT OF ACQUITTAL

The United States of America, by and through its undersigned attorneys, submits this response to defendant Andrew Bigelow, Pankesh Patel, John Benson Wier III and Lee Allen Tolleson's renewed motions for judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure. The defendants renew their motion as to Count 1 on the ground that the evidence presented at trial was insufficient to sustain a conviction as to the charged FCPA conspiracy. (See Docket Entry No. 409.) Specifically, the defendants argue that the conspiracy lacks a cognizable "hub" at its center and the government failed to prove interdependence between the defendants. Tolleson also renews his motion as to Count 9 on the ground that there was a lack of evidence that he participated in the mailing charged in that substantive FCPA count. (See Docket Entry No. 410.)

In their motions, the defendants rely on the same arguments that were raised after the close of the government's case and again after the close of all the evidence and rejected by the Court. The renewed motions do not raise any new arguments or provide any articulable basis to reverse the Court's trial findings. Nor do the renewed motions support the argument, counter to the Court's earlier and correct decision in submitting the case to the jury, that there is no evidence upon which a reasonable juror might fairly conclude guilt beyond a reasonable doubt

for the challenged counts. For these reasons, as set forth below, the defendants' renewed motions for judgment of acquittal should be denied.

BACKGROUND

I. Indictment

Defendants Bigelow, Patel, Wier and Tolleson, along with 18 other defendants, were charged in a superseding indictment, in relevant part, with conspiracy to violate the Foreign Corrupt Practices Act ("FCPA"), 18 U.S.C. § 371, and multiple counts of violating the FCPA, 15 U.S.C. §§ 78dd-1, *et seq.* (See Docket Entry No. 22.[1]) The indictment charges that the defendants participated in a $15 million deal to outfit the country of Gabon's Presidential Guard with various types of military-related products and agreed to pay a representative of the Gabonese Minister of Defense a 20% "commission" – totaling $3 million – in connection with the deal, believing that half of the "commission" would be paid as a bribe to the Gabonese Minister of Defense. In Count 1, the defendants are charged with conspiring to "unlawfully enrich themselves, their associated companies, and their conspirators by making corrupt payments and attempting to make corrupt payments to foreign officials for the purpose of obtaining and retaining business opportunities." (Redacted Indictment ¶ 11.) Count 9 charges that Tolleson, and defendant Daniel Alvirez, "made use of, and aided, abetted, and caused others to make use of, the mails and means and instrumentalities of interstate commerce corruptly in furtherance of" the payment to the Gabonese Minister of Defense. (Id. ¶ 15.) Specifically, it alleges that the "means and instrumentalities of interstate commerce" consisted of a mailing

[1] The defendants proceeded to trial on a redacted indictment, which removed the allegations that did not pertain to the defendants and renumbered the remaining counts and paragraphs, accordingly. (See Docket Entry No. 329.)

"from Bull Shoals, Arkansas, to Washington, D.C., containing two original copies of the purchase agreement for the corrupt Phase Two deal."[2] (Id. Count 9.)

II. Pretrial Motions

During the pre-trial proceedings, the defendants repeatedly attacked the FCPA conspiracy count – to no avail. In pretrial motions, the defendants made the same arguments raised unsuccessfully during trial that now form the basis of their post-trial motions. For instance, in their pretrial motion to exclude coconspirator statements, which the Court rejected, the defendants made the same arguments advanced in their renewed Rule 29 motion that there is "no legally sustainable hub that would support the government's theory of a 'hub and spokes' conspiracy. In addition to the absence of a 'hub,' there is no 'rim' of interdependence between the Defendants and their co-defendants." (Docket Entry No. 345 at 3; see also Docket Entry No. 263 at 1 (in a pretrial motion to dismiss the conspiracy counts, denied by the Court, defendant Wier argues, "There was a total lack of interdependence between Mr. Wier and any other codefendant with respect to the Gabon transaction.").)

III. Rule 29 Motions

At the close of the government's case, the defendants moved for judgment of acquittal pursuant to Rule 29. The defendants argued that the evidence presented in the government's case was insufficient to sustain a conviction on all counts. The defendants again argued with

[2] Three of the original 22 defendants, Daniel Alvirez, Jonathan Spiller and Haim Geri, pleaded guilty to the FCPA conspiracy count. In each instance, the Court found "an independent basis in fact as to each of the essential elements of the [FCPA conspiracy] offense." (Transcript of Plea Hearing of Daniel Alvirez on March 1, 2011, at 49; Transcript of Plea Hearing of Jonathan Spiller on March 29, 2011, at 26; Transcript of Plea Hearing of Haim Geri on April 28, 2011.)

respect to the conspiracy charged in Count 1 that the government had not proved a "hub and spoke" conspiracy because there was no actual "hub" and no true interdependence among all the defendants. (See Transcript of Trial on June 6, 2011 AM at 24-30, 52-56). Tolleson also argued that there was no evidence that he participated in the mailing charged in Count 9. (See Transcript of Trial on June 6, 2011 PM at 22-25.)

Following argument on the motions, the Court ruled:

> With regard to Count 1, the Court denies the motion under Rule 29 by each of the four defendants. The Court believes drawing all the inferences favorable to the government, that there is an adequate evidentiary basis and legal basis for the jury to convict each of the defendants as to Count 1 beyond a reasonable doubt. As to Counts 2 through 9, the Court denies in part and grants in part the defendants' motions. The Court grants the motion to dismiss Count 3 against Mr. Patel and Count 8 as to Mr. Tolleson. As to the remaining counts, the Court denies the motion to dismiss under Rule 29 as to each of those. As to Count 10, the Court grants the motion as to all four defendants to – grant the Rule 29 motion as to Count 10. The Court does not believe the government has demonstrated a sufficient independent basis between the conspiracy that is the focus of Count 1 and the conspiracy to commit money laundering. The Court does not believe under the law and the facts that the jury could find beyond a reasonable doubt that any one of the four defendants was engaged in a conspiracy to commit money laundering. I will grant the motion as to that count.

(Id. at 29.)

Thereafter, Tolleson sought to reconsider the Court's ruling as to Count 9 based on evidence that Tolleson argued would prove he was not present in Arkansas, where ALS Technologies, Inc. is located, when the mailing of the purchase agreement from ALS took place. (See Transcript of Trial on June 8, 2011 PM at 74-82.) The Court refused to reconsider its ruling but indicated that Tolleson could reargue his Rule 29 motion at the close of all the evidence. (See Transcript of Trial on June 9, 2011 PM at 3-7.)

At the close of all the evidence, the defendants renewed their motions for judgment of

acquittal. The defendants argued that the evidence presented in their cases-in-chief demonstrated that the evidence presented by the government was insufficient to sustain a conviction as to the remaining counts. The defendants again argued that the government had not proved the requisite interdependency between the defendants for the conspiracy charged in Count 1. (See Transcript of Trial on June 21, 2011 AM at 14-40, 54-69, 75-77, 79-87). Tolleson also argued that there was no evidence that he helped facilitate the mailing to support an aiding and abetting theory for Count 9. (See id. at 87-89.) Following the argument, the Court denied the defendants' renewed motions and submitted the remaining counts to the jury. (See Transcript of Trial on June 21, 2011 PM at 29-30.)

Following approximately seven days of deliberations, after which the jury indicated that it was deadlocked, the Court granted the defendants' motion for mistrial and discharged the jury. Thereafter, the defendants filed their renewed motions for judgment of acquittal.

ARGUMENT

Relying on the same arguments previously raised in their motions for judgment of acquittal and rejected by the Court, the defendants request that the Court revisit and repudiate its prior rulings. Without advancing any new legal or factual basis, the defendants invite the Court to abandon its earlier findings denying their Rule 29 motions at the close of all the evidence. Because the Court's previous findings are supported by the evidence at trial, which proves the essential elements of the FCPA conspiracy charged in Court 1 and the substantive FCPA violation charged in Count 9, those counts were properly left for the jury to decide. The Court should not now accept the defendants' unwarranted invitation to disturb its prior rulings.

I. Standard of Review

Rule 29 of the Federal Rules of Criminal Procedure provides that "the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." In reviewing a motion for judgment of acquittal, the Court views all evidence in the light most favorable to the government, giving it the benefit of all reasonable inferences. See United States v. Kayode, 254 F.3d 204, 212-13 (D.C. Cir. 2001); United States v. Long, 905 F.2d 1572, 1576 (D.C. Cir. 1990) (noting that "a jury is entitled to draw a vast range of reasonable inferences from evidence"). Accordingly, motions for judgment of acquittal are granted on the basis of insufficient evidence only if the Court concludes, as a matter of law, that no reasonable juror could have convicted on the evidence presented. See United States v. Weisz, 718 F.2d 413, 438 (D.C. Cir. 1983) ("[A] judgment of acquittal is appropriate only when there is no evidence upon which a reasonable juror might fairly conclude guilt beyond a reasonable doubt.") (citing United States v. Reese, 561 F.2d 894, 898 (D.C. Cir. 1977)). In moving for a judgment of acquittal, the defendant bears "an exceedingly heavy burden." United States v. Salamanca, 990 F.2d 629, 637 (D.C. Cir. 1993). The question for the Court is whether "'*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" Id. (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979) (emphasis in original)).

"In ruling on a motion for a judgment of acquittal, 'the trial court must view the evidence in the light most favorable to the Government giving full play to the right of the jury to determine credibility, weigh the evidence and draw justifiable inferences of fact." United States v. Treadwell, 760 F.2d 327, 333 (D.C. Cir. 1985) (quoting United States v. Davis, 562 F.2d 681,

683 (D.C. Cir. 1977)). "There is no requirement of any direct evidence against the defendant; the evidence may be entirely circumstantial." United States v. Poston, 902 F.2d 90, 94 n.4 (D.C. Cir. 1990) (citing United States v. Stone, 748 F.2d 361, 362 (6th Cir. 1984); United States v. Simmons, 663 F.2d 107, 108 (D.C. Cir. 1979)). "[T]he government, when using circumstantial evidence, need not negate all possible inferences of innocence that may flow therefrom." Treadwell, 760 F.2d at 333 (citation omitted).

"This stringent standard contemplates that the ultimate decision of guilt or innocence should be left to the jury, and that it is the province of the jury to credit certain testimony and reject other testimony." United States v. Morrow, 2005 WL 1389256, at *3-4 (D.D.C. 2005) (citing United States v. Davis, 763 F. Supp. 645, 648 (D.D.C. 1991)). "When a reasonable mind might fairly have a reasonable doubt of guilt or might fairly have none, the decision is for the jury to make." United States v. Herron, 567 F.2d 510, 514 (D.C. Cir. 1977) (citation omitted); see also Curley v. United States, 160 F.2d 229, 237 (D.C. Cir. 1947) ("If the evidence reasonably permits a verdict of acquittal or a verdict of guilt, the decision is for the jury to make."). The evidence in question "need not exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt." United States v. Maxwell, 920 F.2d 1028, 1035 (D.C. Cir. 1990) (quoting United States v. Harrell, 737 F.2d 971, 979 (11th Cir. 1984)).

Applying this demanding standard, the defendants cannot carry the heavy burden imposed upon them in renewing their motions for judgment of acquittal under Rule 29.

II. The Defendants' Renewed Rule 29 Motions Are Procedurally Defective

As an initial matter, the defendants' renewed Rule 29 motions are not the proper mechanism to reconsider the Court's legal rulings at trial. At the close of all the evidence, the Court denied the defendants' motions for judgment of acquittal and submitted the case to the jury. In so doing, the Court rejected, as a matter of law, the argument that the evidence – the condition and quality of which has not changed in the defendants' post-trial motions – was insufficient to sustain a conviction. See United States v. Lee, 359 F.3d 412, 418 (6th Cir. 2004) (citing United States v. Keeton, 101 F.3d 48, 52 (6th Cir. 1996) ("The district court's refusal to grant a motion for judgment of acquittal is a legal question that we review *de novo*.")); United States v. Alaboud, 347 F.3d 1293, 1296 (11th Cir. 2003) (citing United States v. Delgado, 56 F.3d 1357, 1363 (11th Cir. 1995) ("Whether there was sufficient evidence to support a conviction is a question of law subject to *de novo* review."); United States v. Kayode, 254 F.3d 204, 212 (D.C. Cir. 2001) (quoting United States v. Harrington, 108 F.3d 1460, 1464 (D.C. Cir. 1997) ("We review a trial court's denial of [a motion for judgment of acquittal] *de novo* . . . .")); United States v. Gomez, 431 F.3d 818, 819 (D.C. Cir. 2005) ("As always with a defendant's claims of insufficient evidence, we review *de novo* . . . .").

It is improper for the defendants to now challenge the Court's legal ruling especially when they rely on the very same evidence (or lack thereof) which formed the basis of the Court's decision at trial. See United States v. Naegele, 537 F. Supp. 2d 36, 40 (D.D.C. 2008) (finding that "[a] Rule 29 motion is not the proper vehicle through which to raise these legal arguments. Under the plain language of Rule 29, the only ground on which the Court may order the entry of a judgment of acquittal is 'if the evidence is insufficient to sustain a conviction of such offense

or offenses.'"); see also United States v. Hyatt, 904 F. Supp. 1351, 1356 (M.D. Fla. 1994) (defendants' position in his post-trial motion that "there was no evidence to allow a finding that Defendants conspired to possess either marijuana or cocaine with intent to distribute" was "fully argued at the time of the close of the Government's case, and at the close of evidence, and denied by the Court. The Court finds that Defendants have submitted no materially significant authority that would warrant a reconsideration of the Court's ruling. Accordingly, Defendants' Renewed Joint Motion for Judgments of Acquittal on the issue of conspiracy is denied."); United States v. Stone, 2009 WL 3806267, at *2 (W.D. Mich. 2009) (after defendant renewed his motion for judgment of acquittal after the jury's verdict of guilty based on "the same argument previously tendered to the Court" at the close of the government's case, the Court ruled that it had "already thoroughly considered, addressed and rejected defendant's sufficiency-of-the-evidence and statute-of-limitations arguments. Defendant provides no new arguments to cause this Court to reconsider its prior rulings. Defendant also advances no arguments to warrant revisiting the Court's prior rulings on 'other' unspecified objections or motions made during trial."); United States v. Mulherin, 529 F. Supp. 916, 923 (S.D. Ga. 1981) (denying defendants' renewed motions for judgment of acquittal on the ground that – after moving for judgment of acquittal at the close of the government's case, which "following a lengthy hearing" were denied, and at the conclusion of trial, which "after due consideration" were also denied – the defendants "ma[d]e no new arguments which would cause the Court to reconsider its prior rulings.").

Similarly, throughout the trial, the Court consistently refused to revisit and relitigate previously considered rulings, including those relating to Rule 29 motions. (See Transcript of

Trial on June 9, 2011 PM at 3-4 ("Before we bring the jury in, following up on the discussion at the end of the day yesterday, Mr. Passanise, I don't usually do do-overs on Rule 29 Motions. We don't usually do what I would characterize as Motions for Reconsideration. So when you get to the end of your case-in-chief, as with the other counsel, you will get an opportunity to bring, you know, a request for a Rule 29 then. And if you want to -- if you want me to visit that issue at that point, based on the state of the evidence after you have put your case-in-chief in, I will entertain whatever arguments you have and hear the Government's opposition to it at that time. So I don't do -- I don't really do reconsiderations on Rule 29, so...."); id. at 12 ("Mr. Lipton, I will go back to where I started, which is I don't do Motions for Reconsideration on Rule 29 arguments and rulings. So to the extent that yours has been recast and cloaked in a different outfit, I am not going to do it. It's nothing more than an effort to indirectly what I told you I don't do directly. So you can move on.").[3]

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[3] See also Transcript of Trial on May 23, 2011 PM at 90-91 ("Now, on another front -- and this is an omnibus comment to all the counsel in this case. Counsel, I don't know how you litigate cases in other jurisdictions, but this relates to this jurisdiction and, in particular, to this Court. *I am not interested in relitigating issues*. It is a monumental waste of my time. It's a monumental waste, frankly, of your time. And to the extent I sense that anyone -- or conclude that any one of the counsel, whether it be Government or defense counsel, is seeking to relitigate issues over and over again, I am going to assure you, you will not be received hospitably. We have had some of that already to date in this case. And what will be even met with less hospitality is seeking to relitigate issues through filing lengthy pleadings. That is not acceptable either. Now, Mr. Bruce has filed very lengthy pleadings this weekend. I am in the process of reviewing them. If it's my conclusion that they are nothing more than attempt to relitigate issues, I not only do not expect the Government to be responding in writing, that -- they will be stricken from the record. This will apply to all counsel in this case, whether Government or defense counsel. *We do not relitigate issues*. In fact, if you wish to file pleadings to raise issues, I want to know it in advance so that I can give you a preliminary assessment whether or not, in my judgment, I think you would be essentially relitigating issues that have already been concluded. We are not going to try this case both in the courtroom and with extensive outside pleadings. Now, I appreciate that you might want to have the benefit of added reflection. I expect you to be sufficiently prepared well in advance when you raise issues

In re-raising the same issues already decided by the Court at trial, the defendants' renewed post-trial motions amount to nothing more than an improper attempt to convince the Court to relitigate what has already been concluded. See United States v. Sunia, 643 F. Supp. 2d 51, 61 (D.D.C. 2009) (citations omitted) ("where litigants have once battled for the Court's decision, they should neither be required, nor without good reason permitted, to battle for it again."). Having failed to supply any reason – compelling or otherwise – for the Court to deviate from its prior rulings, the defendants' renewed motions are procedurally defective and do not warrant the Court's reconsideration.

III. The Evidence at Trial Proves the Existence of an Illegal Agreement

Even if the Court were to permit reconsideration, the defendants' arguments do not provide an appropriate legal basis to disturb the Court's prior rulings. The defendants first argue that the only individuals with whom they could have conceivably entered into an agreement were Richard Bistrong, who the defendants claim served as the "hub" of the conspiracy, or the undercover FBI agents posing as Pascal Latour and Mike Miller, and the defendants cannot legally conspire with a government agent. (See Defendants' Renewed Rule 29 Motion ("Defs.' Mot.") at 5-7.) The defendants' argument – made in their pretrial motion to exclude coconspirator statements, (see Docket Entry No. 345 at 3-4), and reiterated in their Rule 29 motions at the close of the government's case, (see Transcript of Trial on June 6, 2011 AM at 24-25, 42, 52-53), but not pressed in their Rule 29 motions at the close of all the evidence, (see

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before you come into this courtroom to raise them here and we deal with them orally at the bench. *We are not relitigating issues*. That's a warning to all. I am in the process of evaluating Mr. Bruce's pleadings. If it's my judgment that essentially we are relitigating issues, they will be stricken from the record.") (emphasis added).)

Transcript of Trial on June 21, 2011 AM at 14-40, 48-89) – is factually inaccurate and legally besides the point. The government did not advance, nor does it rely on, the noncontroversial principle that a defendant cannot, as a matter of law, conspire solely with government agents. That is because the conspiracy involved many participants, exclusive of Bistrong, Latour and Miller, that included the defendants and the other suppliers in the Gabon deal. The defendants' failed attempt to build up and knock down a straw argument based on the government agents does not undermine the proof at trial that proves the existence of a conspiracy.

To prove the existence of a conspiracy, the government must show that the defendants: (1) knowingly entered into an agreement, (2) with at least one other person, (3) to commit a specific offense, in this case to violate the FCPA, and (4) that the defendant, or any other conspirator, took one step in furtherance of the conspiracy. See United States v. Hemphill, 514 F.3d 1350, 1362 (D.C. Cir. 2008); United States v. Wynn, 61 F.3d 921, 928-29 (D.C. Cir. 1995). As explained in the jury instructions, "the government does not have to prove that the members of the conspiracy entered into a formal agreement or plan, in which everyone involved sat down together and worked out the details." (Jury Instruction No. 36 (citing The Red Book Instr. 7.102 (modified); Pattern Crim. Jury Instr. 6th Cir. 3.00 *et seq.* (2009)).) "It is enough that the government proves beyond a reasonable doubt that there was a common understanding, either spoken or unspoken, among those who were involved." (Id.)

In other words, "the government need only show that the conspirators agreed on "the essential nature of the plan," not that they "agreed on the details of their criminal scheme." United States v. Treadwell, 760 F.2d 327, 336 (D.C. Cir. 1985). To that end, coconspirators need not know each other, nor must they have direct contact with each other. See United States

v. Haynes, 582 F.3d 686, 701 (7th Cir. 2009) (citation omitted). As the Supreme Court has made clear, "at least two people are required to constitute a conspiracy, but the identity of the other members of the conspiracy is not needed inasmuch as one person can be convicted of conspiracy with persons whose names are unknown." United States v. Rogers, 340 U.S. 367, 375 (1951). Indeed, "[a] single conspiracy may be established when each coconspirator knows of the existence of the larger conspiracy and the necessity for other participants, even if he is ignorant of their precise identities." United States v. Stover, 576 F. Supp. 2d 134, 143 (D.D.C. 2008) (quoting United States v. Haire, 371 F.3d 833, 837 (D.C. Cir. 2004)). Moreover, an agreement sufficient to support a conspiracy conviction can be inferred from circumstantial evidence. See United States v. Dean, 55 F.3d 640, 646-47 (D.C. Cir. 1995).

At trial, the evidence showed that the defendants agreed to participate in the Gabon deal and in so doing they shared a common understanding with the other participants of the essential nature of the deal: to corruptly obtain contracts to sell their products to Gabon. The defendants were informed that the total budget for the deal was $15 million, which consisted of several products being supplied by different participants and required a $1.5 million corrupt payment to the Minister of Defense. As it was explained to the defendants, the deal required the participation of other suppliers and the defendants knew that others were involved in the deal, even if the defendants did not know their identities or names and had no direct contact with them. No individual defendant was going to completely supply all of the products or pay the entire $1.5 million to the Minister of Defense.

The fact that government agents were involved in the Gabon deal along with the defendants and other participants does not undermine or negate the existence of the conspiracy.

See United States v. Bicaksiz, 194 F.3d 390, 399 (2d Cir. 1999) (citing United States v. Medina, 32 F.3d 40, 44-45 (2d Cir. 1994) ("parties can conspire through a non-conspiring intermediary, even a government informant.")); United States v. Cordero, 668 F.2d 32, 43 (1st Cir. 1981) (Breyer, J.) ("The participation of a government agent in a conspiracy does not negate the existence of that conspiracy nor make it any the less a violation of the law."); United States v. Barboa, 777 F.2d 1420, 1422 n.1 (10th Cir. 1985) (a government agent's participation in a charged offense "does not negate conspiracy where [the] government agent is [a] conduit between defendant and genuine conspirators."); United States v. Fincher, 723 F.2d 862, 863 (11th Cir. 1984) ("[A] government agent may serve as a 'link' between 'genuine' conspirators."); United States v. Martino, 648 F.2d 367, 405 (5th Cir. 1981) (quotation omitted) ("[A] conspiracy may be proved even though the link connecting many of the activities of the conspirators is a Government informer.").

Furthermore, it is irrelevant to the analysis how the conspiracy is categorized. Despite the defendants' designation of the conspiracy as a "hub and spoke," the conspiracy need not fall neatly into or be circumscribed by a single pictorial characterization. "Rejecting such artificial categories in analyzing conspiracies" because they impede rather than facilitate the conspiracy analysis, courts have "eschew[ed] utilization of figurative analogies such as 'wheels,' 'rims' and 'hubs,' which are often used to describe the nature of complex conspiracies." United States v. Payne, 99 F.3d 1273, 1279-80 (5th Cir. 1996) (quoting United States v. Morris, 46 F.3d 410, 415 n.2 (5th Cir. 1995)); see also United States v. Parker, 554 F.3d 230, 238 n.4 (2d Cir. 2009) (quoting United States v. Borelli, 336 F.2d 376, 383 (2d Cir. 1964) ("the common pictorial distinction between 'chain' and 'spoke' conspiracies can obscure as much as it clarifies."));

United States v. Scott, 511 F.2d 15, 19 (8th Cir. 1975) ("the common pictorial distinction between the spoke conspiracy and the chain conspiracy" are useful in simple cases but tend to lead to confusion in more complex ones).

"The question we must ask is not whether the conspiracy resembled a functional wheel or an unbroken length of chain but 'what is the nature of the agreement. If there is one overall agreement among the various parties to perform different functions in order to carry out the objectives of the conspiracy, then it is one conspiracy.'" United States v. Brito, 721 F.2d 743, 747 (11th Cir. 1983) (quoting United States v. Perez, 489 F.2d 51, 62 (5th Cir. 1973)); see also Scott, 511 F.2d at 19 ("Rather than pushing the pictorial distinction to extremes, the courts find it more useful, in arriving at a reasonable and just decision as to any particular conspiratorial issue," to engage in an analysis that does not hinge on classifying the conspiracy as a spoke or chain); United States v. White, 1994 WL 70855, at *2 (6th Cir. 1994) (unpublished) ("The 'chain' and 'hub-spoke-rim' analogues are interesting, but not helpful to White's case. The question is simply whether White agreed to participate with Lockett in a larger group with a common goal to distribute cocaine.").

Here, the evidence at trial showed that there was a common understanding among the defendants on the essential nature of the Gabon deal with the knowledge that they were part of a larger group supplying $15 million worth of products to Gabon which required a $1.5 million corrupt payment to the Minister of Defense. The defendants' attempt to characterize the nature of the conspiracy as a "hub and spoke" or otherwise does not change that fact. Because the defendants cannot show that *no* reasonable jury could have found the existence of an illegal agreement, the defendants' argument – again – fails.

IV. The Evidence at Trial Shows Sufficient Interdependency

The defendants next argue that there was no proof at trial of interdependency between the defendants. (See Defs.' Mot. at 7-13.) The defendants claim there was no evidence that the defendants' individual transactions depended on the success, participation or contribution of any other defendant. (Id. at 8.) Contrary to the defendants' argument – made in their Rule 29 motions at the close of the government's case, (see Transcript of Trial on June 6, 2011 AM at 28-61), and again at the close of all the evidence, (see Transcript of Trial on June 21, 2011 AM at 14-40, 48-89) – there was more than sufficient evidence of interdependency to prove a single conspiracy.

The issue of interdependency arises when a defendant argues that rather than a single conspiracy, the proof at trial shows multiple separate conspiracies, which could create an impermissible variance between the charges in the indictment and the proof at trial. Here, the defendants requested a multiple conspiracy instruction, (see Docket Entry No. 330, Proposed Instruction No. 10), and the Court – consistent with the law in this Circuit – denied the request, (see Transcript of Trial on June 21, 2011 PM at 96-97; Transcript of Trial on June 21, 2011 AM at 51-54). If "record evidence supports the existence of multiple conspiracies," then the court must instruct the jury to consider them. United States v. Hemphill, 514 F.3d 1350, 1363 (D.C. Cir. 2008) (quoting United States v. Graham, 83 F.3d 1466, 1472 (D.C. Cir. 1996) (citing United States v. Tarantino, 846 F.2d 1384, 1400 (D.C. Cir. 1988))). "On the other hand, when the evidence shows a single conspiracy, the court need not instruct on multiple conspiracies." Hemphill, 514 F.3d at 1363 (citing Graham, 83 F.3d at 1472). Here, as the Court's ruling reflects, the evidence at trial showed a single conspiracy.

In determining whether the evidence supports a finding of a single conspiracy or instead demonstrates multiple conspiracies, courts look at whether the defendants "shared a common goal," any "interdependence between the alleged participants," and "any overlap among alleged participants," such as the presence of core participants linked to all the defendants. United States v. Gatling, 96 F.3d 1511, 1520 (D.C. Cir. 1996) (quoting Graham, 83 F.3d at 1471); see also Tarantino, 846 F.2d at 1393. Courts have held that "[t]he most important of these is whether the conspirators share a common goal." Tarantino, 846 F.2d at 1393; see also United States v. Thomas, 525 F. Supp. 2d 17, 22 (D.D.C. 2007).

In assessing the first factor – whether defendants involved in allegedly conspiratorial conduct shared a common goal – "a conspiracy's purpose should not be defined in too narrow or specific terms." Gatling, 96 F.3d at 1520. Thus, the D.C. Circuit has found "obtaining money in exchange for [government] subsidies," id., "steal[ing] money from [a] union," Hemphill, 514 F.3d at 1364, "limiting competition" in bidding on foreign projects funded by the government, United States v. Bill Harbert Intern. Const., Inc., 608 F.3d 871, 900 (D.C. Cir. 2010), and "accumulat[ion] of wealth by distributing cocaine," Tarantino, 846 F.2d at 1393, to be sufficiently specific common goals.

In this case, the evidence at trial showed that the defendants shared a common goal of unlawfully enriching themselves by obtaining contracts to sell products to the country of Gabon by making corrupt payments to the Minister of Defense. Each defendant was invited to participate in a $15 million deal to outfit Gabon's Presidential Guard with various types of military-related products. (See Government Trial Exhibit ("GX") 42, 42T, 43, 43T, 44, 44T, 45, 45T.) As part of the deal, the defendants were told that a 20% commission – totaling $3 million

– would be paid to Pascal Latour and that half of the commission would be paid as a bribe to the Minister of Defense. (See id.) Each defendant agreed to participate in the deal and thereafter took steps to effectuate the sale of his company's products. The defendants do not contest, nor can they, that the evidence at trial showed that the defendants shared a common goal that more than satisfies the first, and most important, factor in the single conspiracy analysis.

In assessing the interdependence between the alleged participants, courts have held that "fairly minimal" evidence is needed to satisfy this second factor. See Gatling, 96 F.3d at 1522 (finding interdependence between various participants in conspiracy to commit bribery based on minimal factors such as an overlap in participation and timing); Graham, 83 F.3d at 1471-72 (finding interdependence between members of competing drug cliques who assisted each other on occasion, even though the assistance was not significant to the success of each clique); United States v. Mathis, 216 F.3d 18, 24 (D.C. Cir. 2000) (fairly minimal evidence may establish interdependency). "Inherent in this (interdependence) element is the notion of whether the evidence supports an inference that the conspirators knew of their link to other co-conspirators." Thomas, 525 F. Supp. 2d at 22 n.2 (citing Tarantino, 846 F.2d at 1393).

Here, the evidence at trial showed there was more-than-fairly minimal interdependence between the defendants. From the initial telephone calls inviting the defendants to the meetings with Pascal Latour in Miami, it was explained to each defendant that they were part of a larger – $15 million – deal. (See GX 26, 26T, 27, 27T, 28, 28T, 31, 31T, 32, 32T, 35, 35T, 36, 36T, 37, 37T.) At the meetings, the defendants were informed that the $15 million deal to outfit Gabon's Presidential Guard included a variety of products. (See GX 42, 42T, 44, 44T, 53, 53T, 55, 55T.) The defendants were also told the deal included a $3 million commission to Latour, half of

which would to be paid to the Minister of Defense. (See id.) At the meetings, each defendant learned that his company was not supplying all of the products that made up the $15 million budget nor paying all of the money that comprised the $1.5 million going to the Minister of Defense. Rather, each defendant was going to be supplying a certain product or products that together would fill the requested procurement needs of Gabon and each defendant would finance his part of the corrupt $1.5 million corrupt payment to effectuate the overall deal.

The evidence at trial showed that in Miami, Lee Tolleson accompanied Daniel Alvirez to the first meeting, where they were told that they were going to be supplying two of the more than a dozen products that made up the procurement list for the Gabon deal. Indeed, Tolleson and Alvirez were shown the list of products for the Gabon deal and informed that other suppliers were going to be handling the rest of the items. (See GX 38, 42, 42T.) Tolleson was told that his company was just one of many suppliers in the deal but that Tolleson, along with Alvirez, Richard Bistrong and Mike Miller, were going to be partners in the entire Gabon deal. (See GX 42.) Tolleson was informed he was going to receive a percentage of the entire deal, amounting to approximately $45,000, which meant he was going to personally benefit from the participation of other participants. (See GX 37, 37T.) Thereafter, Tolleson worked together with Alvirez in moving forward with the deal including, sending quotes and invoices for their company's products. (See GX 47-49.)

The evidence showed that Tolleson and Alvirez not only worked on the Gabon deal together, but they also attended Latour's meetings in Miami with co-defendants Jonathan Spiller, Marc Morales and Greg Godsey. (See GX 43, 43T, 45, 45T.) Tolleson and Alvirez were present when the same details of the Gabon deal were explained to Spiller, Morales and Godsey. (See

id.) At trial, Spiller testified that he was told and understood that there were a number of other participants in the Gabon deal who were supplying products for the $15 million procurement and contributing their share of the $1.5 million bribe to the Minister of Defense. (See Transcript of Trial on May 31, 2011 AM at 10-11.)

The evidence showed that Tolleson and Alvirez also greeted Pankesh Patel when he arrived in the Miami hotel room immediately before Patel's meeting with Latour, where the details of the $15 million deal were explained to him. (See GX 44, 44T.) Patel not only saw other participants in the deal but he also provided a brochure for one of the products he was trying to sell to Gabon for Bistrong to give to Spiller, who Patel had met and discussed the deal with earlier that day. (See id.)

The evidence showed that in John Wier's meeting with Latour in Miami, he was told that the $15 million budget for the Gabon deal involved products in addition to the one his company was supplying, including weapons, holsters, body armor and riot control equipment. (See GX 55, 55T.) Wier also saw sample products in the hotel room that had been sent by other suppliers in the deal, and he and Bistrong specifically discussed the riot control equipment being supplied by co-defendant Saul Mishkin. (See id.)

The evidence showed that in Andrew Bigelow's meeting with Latour in Miami, he was told about the total value of the deal and the total amount of the payment to the Minister of Defense. (See GX 53, 53T.) He was also told that Alvirez was involved in the deal and was sharing in Bistrong's profits. (See id.) As with Tolleson, Patel and Wier, it was explained to Bigelow that the product his company was going to supply was just one item in the overall deal. (See id. ("Once [the Minister of Defense] sees that *everyone* is ante-ing up, then . . . we get the

go ahead for the final order" (emphasis added)).)

The evidence showed that following the meetings in Miami, all of the defendants went forward and took steps in furtherance of the Gabon deal with the understanding that the deal included other participants who had to supply their products in order to make up the full compliment of items for the $15 million budget and account for the $1.5 million bribe that had to be paid to the Minister of Defense. The evidence showed that Bistrong continued to have discussions with the defendants that indicated other suppliers were integral to the deal. (See GX 83, 83T ("some people" in the deal have asked for paperwork); 95, 95T ("I've got everything at Cargo Transport now except for the five State Department items"); 117, 117T (there are "like 15" purchase order contracts in the deal); 120, 120T (the procurement official will be coming to the United States with the signed contracts); 123, 123T (the procurement official will hand out the purchase orders).) In addition, Spiller testified that all of the products being supplied for the first phase of the deal needed to be consolidated together before they could be shipped to Gabon. (See Transcript of Trial on May 31, 2011 AM at 17.)

The evidence showed that the defendants, and over a dozen other participants in the deal, met at a reception at Clyde's restaurant in Washington, D.C. where Bistrong and Jean-Pierre Mahmadou, posing as a procurement official from the Gabonese Ministry of Defense, made speeches thanking the Gabon suppliers collectively for participating in the deal and congratulating them for successfully completing the first phase of the deal. (See GX 137, 137T.) In each of their meetings with Mahmadou, Bistrong told Patel and Wier that he would have to submit all of the purchase agreements for the second phase of the deal together once they were returned to Bistrong. (See GX 140, 140T, 143, 143T.) A cover letter with the purchase

agreement for Tolleson's company also indicated that Bistrong was required to consolidate all of the documents from every supplier. (See GX 152.)

Finally, the evidence showed that the defendants and all of the other participants in the Gabon deal, except for one, met in Las Vegas before a scheduled meeting with Gabon's new Minister of Defense, where the participants were expected to receive deposit checks for the second phase of the deal.

The inherent connections between the defendants in working toward a deal that could not have been consummated without the participation of other supplies provides more than the fairly minimal evidence needed to satisfy the interdependency factor. From the evidence, it is clear that the Gabon deal was dependent on assembling products beyond just those being supplied by the individual defendant to fulfill the $15 million budget. Without fulfilling the procurement, the suppliers would not have been able to pay the $3 million commission required to finance the $1.5 million payment to the Minister of Defense. Each defendant was made aware that he was part of a larger venture where others were performing the same or similar role in supplying various products which were equally important to the success of the deal. By supplying their particular product from a procurement list containing numerous products, each defendant was facilitating the venture as a whole.[4]

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[4] The third and final factor in the single conspiracy analysis – overlap among participants – is "less significant" than the others, requiring the presence of core participants linked to all the defendants. United States v. Hemphill, 514 F.3d 1350, 1363 (D.C. Cir. 2008) (citing Mathis, 216 F.3d at 23-24); Gatling, 96 F.3d at 1520. While the defendants addressed this factor in their Rule 29 motions at the close of all the evidence, (see Transcript of Trial on June 21, 2011 AM at 17-18, 30), they fail to raise it in their post-trial motions. Here, there is at least one conspirator – Daniel Alvirez – who was linked to the other defendants. The evidence at trial showed that Alvirez was assisting Bistrong in the Gabon deal and was going to share in the profits with him, thereby personally benefitting from the participation of other participants.

The defendants challenge the conspiracy evidence by arguing that the recorded statements of Bistrong to the defendants are not evidence because they were not offered for their truth. (See Defs.' Mot. 8-9.) This same argument was made by the defendants in their Rule 29 motions at the close of the government's case. (See Transcript of Trial on June 6, 2011 AM at 34-37.) At trial, the government did not offer Bistrong's statements for their truth, but rather to place the defendants' statements in context so they would be intelligible and understandable. As a result, Bistrong statements did not constitute inadmissible hearsay. That does not mean, however, that Bistrong's statements, when used to place the defendants' statements in context, lost their evidentiary value. See United States v. Jordan, 810 F.2d 262, 264 (D.C. Cir. 1987). To the contrary, the jury was properly permitted to consider Bistrong's statements in order to put the defendants' statements in perspective. See United States v. Lemonakis, 485 F.2d 941 948-49 (D.C. Cir. 1973). In doing so, the jury was able to view the recorded meetings in Miami with Bistrong and the defendants in proper context so the defendants' statements – both verbal and non-verbal – were intelligible and understandable. That way, the jury was able to consider what the defendants' heard, what they said, and how they reacted to the invitation to participate in the Gabon deal. As the Court remarked during argument on the Rule 29 motions at the close of the government's case:

> [T]he videotape shows the four clients, the four defendants in the room. It shows their reaction to the pitch. It shows their conduct thereafter consistent with their reaction to the pitch. All of that is before the jury. There is no issue about any of

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Each of the defendants was informed, in recorded telephone calls and/or at the meetings in Miami, that Alvirez was involved with Bistrong in putting the deal together. At the Clyde's reception, which celebrated the successful completion of the first phase of the deal and the initiation of the second phase, Bistrong gave a speech in which he specifically thanked Alvirez for contributing to the success of Bistrong's company.

> that. It shows the various steps they took, the various things they did consistent with what they observed in the pitch meeting. And, from that, they can draw inferences, reasonable inferences, as to whether or not that conduct that followed subsequently is conduct consistent with not only an understanding of what was being offered, but a desire and willingness to participate in the thing.

(Transcript of Trial on June 6, 2011 AM at 41.)

The defendants also claim a lack of interdependence because some of the defendants, like Wier and Alvirez, tried to encroach on one another's deals and other defendants, such as Bigelow and Paz, were at odds with each other. (See Defs.' Mot. at 9.) The defendants advanced the same claim in their Rule 29 motions at the close of the government's case and again at the close of all the evidence. (See Transcript of Trial on June 6, 2011 AM at 55-57; Transcript of Trial on June 21, 2011 AM at 27, 38, 30-31, 57-58.) The fact that coconspirators sometimes compete for business does not necessarily disprove the existence of a conspiracy. See United States v. Smith, 1996 WL 293159, at *3 (4th Cir. 1996) (unpublished) ("This testimony clearly indicates competition, but not necessarily separate conspiracies."). The fact that coconspirators "may sometimes, or even always, compete for supplies or customers in serving [the] market does not on that account alone disprove the existence of a single conspiracy to achieve the overall results of their several efforts." United States v. Banks, 10 F.3d 1044, 1054 (4th Cir. 1993); see also United States v. Roach, 164 F.3d 404, 412 (8th Cir. 1998) ("[d]ealers who compete with one another may be members of the same conspiracy"). The same can be said for coconspirators in conflict with one another. The fact that coconspirators dislike one another does not prevent them from sharing a common understanding to participate in an illegal venture, as was the case here. The defendants argue that the telephone call between Bistrong and Mishkin on June 25, 2009, in which Bistrong indicates that Mishkin could leave the deal but

should not convey his concerns to other participants and then allows Mishkin to restructure the deal, is inconsistent with the concept of interdependency. (See Defs.' Mot. at 10.) The defendants' argument – made in their Rule 29 motions at the close of all the evidence, (see Transcript of Trial on June 21, 2011 AM at 18-29) – does not undermine the conspiracy. As was made clear at trial, Mishkin did not convey any of this concerns to the defendants and they were unaware of the call with Bistrong. Even if the defendants had found out about Mishkin's concerns and restructuring his deal, "a single conspiracy can 'pursue multiple schemes with different *modi operandi* without dividing into multiple conspiracies, as long as there is a single objective.'" United States v. Brockenborrugh, 575 F.3d 726, 737 (D.C. Cir. 2009) (quoting Hemphill, 514 F.3d at 1364 ("The mere fact that the conspirators found different ways to [carry out their crime] does not break the conspiracy into parts.")). To the extent the restructuring of Mishkin's deal qualifies as a different *modi operandi*, especially given that he returned to the original structure for one of the products he went on to supply in the second phase of the deal, there was no difference in his underlying objective – to unlawfully enrich himself by corruptly obtaining business from Gabon.

The defendants argue that the participants in the Gabon deal were compartmentalized and did not know who else was participating in the deal or the details of their arrangements and therefore could not have conspired with 21 other defendants. (See Defs.' Mot. 10-11.) The defendants made the same argument in their Rule 29 motions at the close of the government's case and again at the close of all the evidence. (See Transcript of Trial on June 6, 2011 AM at 43-45, 50-51; Transcript of Trial on June 21, 2011 AM at 50-51, 58.) Contrary to the defendants' argument, the government is not required to prove that the defendants conspired

with all of the other charged defendants. The defendants have not cited any authority – nor is there any available – to support their position. "The essential element of conspiracy is an agreement with at least one other person to violate the law." Graham, 83 F.3d at 1471. Indeed, the government need not prove that a defendant even knew all the conspirators or that all details of the conspiracy were known to him. See United States v. Foote, 898 F.2d 659, 663 (8th Cir. 1990). As explained by the Court in the jury instructions, to find the defendant guilty of conspiracy, the government was required to prove, among other things, that "an agreement existed between two or more people." (Jury Instruction No. 36.)

The defendants argue that their individual deals were not premised on an agreement with the other participants because they entered into individual purchase agreements without any contingency on any larger deal. (See Defs.' Mot. at 12.) The defendants made the same argument in their Rule 29 motions at the close of the government's case and again at the close of all the evidence. (See Transcript of Trial on June 6, 2011 AM at 59; Transcript of Trial on June 21, 2011 AM at 36, 39-40, 68-69.) "The existence of separate transactions does not have to imply separate conspiracies if the co-conspirators acted in *concert* to further a common goal. Courts typically define the common goal element as broadly as possible, with "common" being defined as "similar" or "substantially the same." United States v. Seher, 562 F.3d 1344, 1366 (11th Cir. 2009) (emphasis in original). "A single overall conspiracy can be made up of a number of separate transactions and of a number of groups involved in separate crimes or acts." United States v. McGilberry, 620 F.3d 880, 885-86 (8th Cir. 2010) (quoting Roach, 164 F.3d at 412). "A single conspiracy may exist . . . even if many participants are unaware of, or uninvolved in, some of the transactions." United States v. Burns, 276 F.3d 439, 444 (8th Cir.

2002) (quoting Roach, 164 F.3d at 412).

Even were that not the case, the evidence at trial showed that the defendants were aware of the other transactions – all of which took place over the same time frame – from May 2009 to January 2010. The defendants were informed from the onset of the deal that they were part of a larger transaction to supply Gabon's Presidential Guard with $15 million in military-related products. To accomplish that goal, the defendants were told that the deal would proceed in two phases: a small test phase and then a larger contract phase. At Clyde's, the defendants were all told – together – that they were getting their purchase agreements for the second phase of the deal. The defendants were then informed that all of the contracts would be submitted to Gabon – together. As a result, the defendants' argument with respect to the purchase agreements, like their other attacks on interdependency, do not undermine the conspiracy. "Each of the specific acts [the defendants] cite as proof of multiple conspiracies can be more sensibly interpreted as the pursuit of a single objective:" to unlawfully enrich themselves by obtaining contracts from Gabon. Hemphill, 514 F.3d at 1364.

V. The Evidence at Trial Was Sufficient to Prove the Mailing

Defendant Lee Tolleson's motion for judgment of acquittal as to Count 9 also fails. Tolleson argues that the count should be dismissed because a reasonable jury could not find him guilty as a principal or under an aiding and abetting theory due to the lack of evidence that Tolleson actually mailed, or participated in the mailing, of the purchase agreement or evidence that Tolleson was in a position to direct others to mail the purchase agreements. (See Tolleson's Renewed Motion for Judgment of Acquittal ("Tolleson Mot.") at 4-5.) Additionally, Tolleson argues that a conviction under a Pinkerton theory cannot be sustained because he did not have

authority to bind ALS Technology, Inc. in the Gabon deal and thus he lacked the requisite intent to enter into an agreement with any of the alleged co-conspirators. (See id. at 5-6.) These arguments are without merit and have already been rejected the Court. (See Transcript of Trial on June 21, 2011 AM at 87-89; Transcript of Trial on June 21, 2011 PM at 29-30.)

As the Court instructed the jury, in order to prove a substantive FCPA charge involving the use of the mails, "the government is not required to prove that the defendant actually mailed anything. The use of the mails may be satisfied if the mailing either followed in the ordinary course of business or events or was reasonably foreseeable." (Jury Instruction No. 39.) The evidence at trial, particularly when viewed in the light most favorable to the government, proved that the mailing followed in the ordinary course of events and was reasonably foreseeable to Tolleson. FBI Special Agent Njock testified that during the balcony meeting at Clyde's restaurant, he and Bistrong gave Tolleson and Alvirez a copy of the purchase agreement, which the company was to review, execute and return. (See Transcript of Trial on June 2, 2011 AM at 69-70.) Therefore, the evidence at trial proved that the mailing of the purchase agreement to Washington, D.C. followed in the ordinary course of events and was foreseeable to Tolleson.[5] It is thus irrelevant whether Tolleson was in Arkansas at the time the purchase agreement was mailed. Accordingly, Tolleson's argument that he cannot be found guilty of Count 9 as a principal fails as a matter of law and fact.

With regard to aiding and abetting, Tolleson argues that a reasonable jury could not convict him of aiding and abetting because the government must prove "some affirmative

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[5] The government proved both by stipulation and documentary evidence that the purchase agreement was mailed from Arkansas to Washington, D.C. and Tolleson does not dispute this fact. (See GX 152, 215.)

participation that encourages the principal offender to commit the offense" and the record is void of any evidence that Tolleson facilitated the mailing of the document or that he was in a position to direct others to mail the document. (Tolleson Mot. at 4-5.) In support of his argument, Tolleson cites United States v. Garrett, 720 F.2d 705, 713-14 (D.C. Cir. 1983), and United States v. Teffera, 985 F.2d 1082, 1087 (D.C. Cir. 1993). (See Tolleson Mot. at 4-5.) However, neither case supports his argument. Indeed, in Garrett, the D.C. Circuit stated that "[a] culpable aider and abettor need not perform the substantive offense, need not know its details, and need not even be present so long as the offense committed by the principal was in furtherance of the common design." Garrett, 720 F.2d at 714 (internal quotations and citations omitted). Additionally, the court upheld the defendant's conviction for aiding and abetting the interstate transportation of a minor for the purpose of prohibited sexual conduct even though the defendant was neither present for the substantive offense nor did he know the details of the offense. See id. at 713-14.

Similarly, Teffera does not support Tolleson's argument. As an initial matter, the case bears virtually no factual resemblance to the circumstances here. In Teffera, the defendant challenged his conviction for aiding and abetting possession of narcotics with intent to distribute. See Teffera, 985 F.2d at 1084-88. The court found that there was no direct evidence of "the most basic prerequisite of aiding and abetting," that the defendant knew of the existence of the criminal venture. Id. at 1086. In contrast, in this case, there is ample evidence of Tolleson's knowledge of the criminal venture, including video and audio recordings showing Tolleson being told about the criminal venture and agreeing to participate in it. (See GX 42, 42T.) Additionally, in Teffera, the court stated:

> To prove that a defendant aided and abetted the possession of illegal narcotics, the government need not show that a defendant ever physically possessed or otherwise controlled the movement of the drugs; rather, it must demonstrate "sufficient knowledge and participation to indicate that [the alleged aider and abettor] knowingly and willfully participated in the offense in a manner that indicated he intended to make it succeed."

Id. (quoting United States v. Raper, 676 F.2d 841, 849 (D.C. Cir. 1982)).

Thus, Teffera suggests that in an FCPA case, the government need not show that the defendant actually mailed the document or otherwise controlled the mailing. Instead, the government need only demonstrate sufficient knowledge and participation by the defendant to indicate that he knowingly and willfully participated in the corrupt scheme in a manner that indicated he intended to make it succeed. Here, the evidence proved that Tolleson was told of the corrupt nature of the deal on numerous occasions during his own meeting in Miami with Pascal Latour as well as Jonathan Spiller and Marc Morales and Greg Godsey's meetings, and that Tolleson prepared and sent invoices in furtherance of the deal. (See GX 42, 42T, 43, 43T, 45, 45T.) The evidence also proves that Tolleson agreed to accept $45,000 in connection with assisting Alvirez in the deal and that he worked with Alvirez and Bistrong to obtain a gun as a gift for the new Minister of Defense in connection with the deal. (See GX 37, 37T.) Additionally, the evidence proves that Tolleson attended a reception for the Gabon deal participants in Washington, D.C., during which he and Alvirez were thanked for the corrupt payment. (See GX 141, 141T.) Accordingly, a reasonable jury could conclude that Tolleson knowingly and willfully participated in the offense in a manner that indicated he intended to make it succeed. Moreover, the evidence proved that Tolleson and Alvirez were given a copy of the purchase agreement for ALS to review, execute and return, that Alvirez signed the agreement, and that the agreement was mailed from Arkansas to Washington, D.C. (See

Transcript of Trial on June 2, 2011 AM at 7; GX 141, 141T, 152, 215). As such, a reasonable jury could conclude that Tolleson is guilty of Count 9 under an aiding and abetting theory.

Tolleson's argument regarding the Pinkerton theory also fails. Tolleson argues that a reasonable jury could not find him guilty under a Pinkerton theory because he did not have the authority to bind ALS and thus he lacked the requisite intent to enter into an agreement with the alleged co-conspirators.[5] (See Tolleson Mot. at 5-6.) Tolleson cites no cases for the proposition that a defendant cannot have the requisite intent to commit an FCPA violation if he does not have authority to bind the company for which he is seeking to obtain business and the government is not aware of any such cases. Indeed, even if Tolleson did not have the authority to bind ALS, at a minimum the evidence proved that Alvirez, a co-conspirator, did have authority to bind ALS, (see Transcript of Trial on June 21, 2011 AM at 80), and that Tolleson and Alvirez attended the meeting in Miami together, during which they were told about the corrupt nature of the deal, and that they both agreed to participate in the deal and accept a commission for the successful completion of the deal. (See GX 42, 42T.) Accordingly, even if the law required conspirators to have the authority to bind a company – and Tolleson has cited no cases in which a court has required such authority to find the requisite intent – a reasonable jury could find that Tolleson agreed to work with Alvirez, who did have authority to bind ALS, to fulfill ALS's part of the larger conspiracy and thus a jury could find Tolleson guilty of Count 9 under a Pinkerton theory.

[5] For the reasons described above, the evidence demonstrated that the mailing was a reasonably foreseeable consequence of the conspiracy and Tolleson does not argue otherwise.

CONCLUSION

For the foregoing reasons, the Court should deny the defendants' renewed motions for judgment of acquittal.

Respectfully submitted,

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