FOR PUBLICATION

IN THE SUPERIOR COURT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, **Plaintiff,** **v.** **HAISEN LI,** **Defendant.**	**CRIMINAL CASE NO. 09-0011D** **ORDER GRANTING DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL**

This matter came for trial on October 7, 2009, at 9:00 a.m. in courtroom 217A. Assistant Attorney General William Downer appeared on behalf of the Commonwealth of the Northern Mariana Islands (the "Government"). Assistant Public Defender Richard Miller appeared on behalf of defendant Haisen Li ("Defendant"). Having considered the arguments of counsel, the pleadings, materials on record, and the relevant rules and case law, the Court hereby GRANTS Defendant's motion for a judgment of acquittal.

I. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is charged with two counts. In Count I, Defendant is charged with conspiracy to commit bribery in violation of 6 CMC § 303(a) and made punishable by 6 CMC §§ 304(b) and 3201. (Information at 1-2.) In Count III, Defendant is charged with bribery in violation of 6 CMC § 3201 and made punishable by 6 CMC § 3201. (*Id.* at 3.) Specifically, Defendant is accused of making at least one (1) and as many as five (5) payments to co-defendant Steve Villagomez Mori ("Mori"), while Mori was employed as a meter-reader by the Commonwealth Utilities Corporation ("CUC"). (*Id.*) The

payments were allegedly given in exchange for Mori's agreement to tamper with the electric meter readings for a CUC account belonging to a third party. (*Id.*) On April 3, 2009, Mori accepted a plea agreement and plead guilty to violating CUC code section 4 CMC § 8154.[1] The remaining charges against Mori, including bribery and conspiracy to commit bribery, were dropped. The case therefore proceeded to trial against Defendant only. At the close of the Government's case, Defendant made a motion for judgment of acquittal arguing that the Government could not satisfy the "official act" element of the bribery charge.

II. STANDARD

The Court may enter a judgment of acquittal where the evidence is insufficient to sustain a conviction. Com.R.Cr.P. 29. The motion must be granted if "there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt. *Commonwealth v. Ramangmau*, 4 N.M.I. 227, 237-8 (1995). In making this assessment, the court may not weigh or draw inferences from the evidence, or assess witness' credibility; these are the functions of the jury." *Id.*

III. DISCUSSION

A. Common Law Definitions of "Official Act" Apply Because the Term is not Statutorily Defined.

Defendant is charged with bribery in violation of 6 CMC § 3201 and conspiracy to commit bribery in violation of 6 CMC § 303(a). The Commonwealth's bribery statute provides the following:

> Every person who shall unlawfully and voluntarily give or receive anything of value in wrongful and corrupt payment for an official act done or not done, to be done or not to be done, shall be guilty of bribery, and upon conviction thereof may be imprisoned for a period of not more than five years, and shall be fined three times the value of the payment received; or, if the value of the payment cannot be determined in dollars, shall be imprisoned for a period of not more than five years, and fined not more than $1,000.

[1] 4 CMC § 8151 provides that a "A member of the board, officer, counsel, employee, or agent of the corporation or any other person who embezzles, abstracts, or willfully misapplies any money, funds, credits, or securities of the corporation, or who willfully makes any false entry in any book, report, or statement of the corporation, or who does any other act with intent to injure or defraud the corporation, or who accepts any unlawful consideration which relates to his duties under this Chapter, or any individual who, with like intent, conspires with, aids, or abets any person in any violation of this section, shall be dismissed from employment, permanently barred from reemployment with the corporation, civilly liable for any losses that their actions caused the corporation, fined not more than $2,000 or imprisoned for not more than five years, or both."

6 CMC § 3201. Our Supreme Court has interpreted this statute as having four "essential" elements:

> (1) whether [the defendant] knew that [the alleged bribee] was a public officer; (2) whether [the defendant] unlawfully and voluntarily gave something of value to [the alleged bribee]; (3) whether [the defendant's] intent or *mens rea* in doing so was wrongful and corrupt; and (4) whether [the defendant] did so to obtain an official act by [the alleged bribee].

Commonwealth v. Lee, 2005 MP 19, ¶ 17. To obtain a bribery conviction, therefore, the Government must prove that the payments Defendant allegedly made to Mori were for an "official act."

Because the term "official act" is not defined in the Commonwealth Code, the Court must apply the rules of statutory construction. A basic rule of statutory construction is that words should be given their plain meaning. *Lee*, 2005 MP 19, ¶ 12 (citing *Commonwealth v. Itibus*, 1997 MP 10 ¶ 6; *Commonwealth v. Nethon*, 1 N.M.I. 458, 461 (1990)) In addition, courts applying criminal laws must strictly construe the plain language of a statute. *Id.* (citing *Nethon*, 1 N.M.I at 461). When statutory language is taken directly from the common law and uses common law terms of art which are not otherwise defined, "then we presume that the legislature knows and has adopted 'the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken.'" *Id.* (quoting *Morissette v. United States*, 342 U.S. 246, 263 (1952)). Our Supreme Court has previously turned to the common law for guidance in interpreting common law terms of art that are not statutorily defined. *Id.* Because the term "official act" is a common law term of art that is not statutorily defined, the Court must similarly examine common law definitions in order to apply 6 CMC § 3201.

B. The Term "Official Act" Derives Its Meaning From Common Law Bribery, Which Historically Only Criminalized the Acts of Public Officials.

Historically, common law bribery only criminalized certain acts of public officials. In fact, in its earliest appearance, bribery was only applicable to judges who accepted payments in exchange for favorable rulings. *Maryland v. Canova*, 365 A.2d 988, 990 (Md. App. 1976) (citing 4 *W. Blackstone, Commentaries* 140). Over time, however, common law bribery expanded so that it applied to public officials in the legislative and executive branches of government as well. *Ellis*, 33 N.J.L. at 104 (citing 3 *Greenleaf's Ev.*, § 71; *Bishop on Criminal Law*, Vol. 1, § 95, *and notes*; 1 *Russel on Crimes* 156). Bribery therefore came to signify "the taking or giving of a reward for offices of a public nature." *Id.* at 103 (citing *Hawkins, Pleas of the Crown*, Vol. 1, p. 312). Courts also began to recognize that, in

addition to a public official's act of accepting certain payments, bribery criminalized any person's act of paying a public official. *Canova*, 365 A.2d at 990. Nevertheless, the crime necessarily involved paying a public official for some act that the official was authorized to perform pursuant to his or her public office. This common law history provides the origins and context from which the term "official act" derives its meaning. An "official act " is an act performed by a public official in which the public official exercises his or her power to decide or take action on a matter which is before the official by virtue of his or her public office. *See Lee*, 2005 MP 19, ¶¶ 16-17. Supporting this definition, the federal bribery statute assigns a similar meaning to the term "official act." Under 18 U.S.C. (a)(3), an "official act" is "any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit."

C. Interpreting the Term "Official Act" as an Act that Must Be Performed by a Public Official Accords with Commonwealth Case Law.

Interpreting the term "official act" as an act performed by a public official also accords with Commonwealth case law. *Lee*, 2005 MP 19; *Commonwealth v. Duenas*, 4 N.M.I. 377 (1996). In *Lee*, our Supreme Court found that an employer who paid a Department of Labor and Immigration ("DOLI") investigator for a favorable ruling in a labor case had committed bribery. *Id.* ¶ 19. In its decision, the court explicitly stated that one of the four "essential elements" of a bribery conviction was "whether [the defendant] knew that [the alleged bribee] was a public officer[.]" *Lee*, 2005 MP 19, ¶ 17. Essential to the court's conviction was its finding that the DOLI investigator was a public official. Furthermore, in determining whether the payment was "corrupt," the court stated that "'conduct is corrupt if it's an improper way for a public official to benefit from his job.'" *Id.* ¶ 14 (quoting *United States v. Dorri*, 15 F.3d 888, 894 (9th Cir. 1994) (Kozinski, J., dissenting) (majority in full agreement with "the dissent's very eloquent explanation of the [common] law of bribery")). Thus, the Supreme Court adopted the position that bribery concerns payments intended to wrongly influence the acts of not just any public employees, but specifically public officials. The court stated that "[c]orrupt payment-- the motive for a public official to illegally benefit from his job or the motive for a citizen to gain an unfair advantage-- is required by our statute for either the giving or receiving of a bribe." *Id.* ¶ 16.

The *Lee* court also made it clear that the societal harm which the offense of bribery targets is improper influence intended to induce "unfair governmental advantage." *Id.* The court's conviction thus depended on finding that the defendant was aware of "the power of an investigator to decide" a claim and the "great amount of influence" an investigator might have on the outcome of a labor case. *Id.* ¶ 5. In contrast, in this case, Defendant's alleged act of paying a meter-reader to record a false reading is not influence peddling. Mori was in no position to decide a case, write a law, award a government contract, or influence any such decision. He could not tip the scales of governmental decision in favor of one party to the detriment of another. Mori was not a public official and his alleged misfeasance in falsely reporting meter readings, while reprehensible, was not an official act.

The *Lee* court's focus on improper influence in applying 6 CMC § 3201 also harmonizes with the meaning the term "official act" has been given in the United States military, another jurisdiction which draws from the common law of bribery. Although most jurisdictions have codified the crime of bribery into their statutory framework, the United States military still applies the common law.[2] Accordingly, military courts have defined bribery as "the voluntary giving or receiving of anything of value in corrupt payment for an official act, done or to be done." *United States v. Holt*, 7 U.S.C.M.A. 617, 619 (1957) (quoting Bishop's Criminal Law, Vol 2, 9th ed., § 85. In *United States v. Bey*, 4 U.S.C.M.A. 665, 666 (1954), a platoon sergeant who gave out military passes to trainees for a five-dollar tip was not guilty of bribery. The court stated the following:

> Regardless of its description at the trial, it is apparent that the offense alleged is not bribery. The specification does not state, directly or by necessary implication, that the accused accepted the money with intent to influence his official action. This intent is an essential element of bribery, and the failure to allege it precludes conviction for that offense.

Id. at 668. Although the act of giving out military passes to members of the platoon sergeant's battery was within the scope of the sergeant's general authority, the military court did not consider the payment a bribe because it was not intended to influence the sergeant's official action. In other words, the

---

[2] The Uniform code of Military Justice does not contain a bribery article. *See Holt*, 7 U.S.C.M.A. at 619-20. Uncodified common law crimes like bribery may, however, subject a person to a court-martial under the catch all Article 134 ("General Article") respecting "conduct of a nature to bring discredit upon the armed forces . . . ." *See id.*; 10 USCS § 934. As such, questions concerning the elements of common law bribery have come before the United States Court of Military Appeals.

payment was not given to influence the sergeant's power to decide or take action on the type of matter that common law bribery was designed to keep free from corruption. Similarly, in this case, the payments Defendant allegedly gave Mori were not intended to influence any official action. As a CUC meter-reader, Mori was not endowed with the power to take official action.

D. Mori Was Not a "Public Official."

Defining "official act" does not end the Court's inquiry. The meaning of the term "public official," also requires interpretation in order to apply 6 CMC § 3201. As with "official act," the term "public official" is not defined in the Commonwealth's Criminal Code. *Commonwealth v. Pangelinan*, 3 CR 839, 851 (D.N.M.I. App. Div. 1989). Nevertheless, Commonwealth case law interprets the term for purposes of applying 6 CMC § 3202, Misconduct in Public Office, which comes directly after the Commonwealth's bribery statute in the Code.[3] Our case law indicates that a "public official" is someone elected or appointed to public office or someone like a police officer who has been entrusted with special obligations to the public as demonstrated by an oath. *Commonwealth v. Atalig*, Crim. No. 99-0098 (N.M.I. Super. Ct. June 23, 2000) (Order at 12) (director of Coastal Resources Management Office was a public official because appointed by governor and sworn to uphold Commonwealth laws and Constitution), *affirmed by Commonwealth v. Atalig*, 2002 MP 20; *Commonwealth v. Kaipat*, 2 N.M.I. 322 (1991) (police officers are public officials because they take oath to support laws, share in power of sovereign, and have unique authority to arrest). In a recent case, a CUC customer service representative was found not to be a public official and the prosecution conceded that the Defendant had been mischarged with Misconduct in Public Office. *Commonwealth v. Tarope,* Crim. No. 07-0107 (N.M.I. Super. Ct. July 14, 2008) (Withdrawal of Opposition to Defendants Tarope and Terlaje's Motion to Dismiss Count V of the First Amended Information and Joinder in Defendant's Motion). Like a CUC customer service representative, a CUC meter-reader is not a public official. A meter-

[3] At oral argument, the Government asserted that the fact that the Bribery and Misconduct in Public Office statutes were not conjoined in their source, the Trust Territory Code, implies that judicial interpretation of 6 CMC § 3202 should have no bearing on the Court's construction of 6 CMC § 3201. Nevertheless, the fact that the Commonwealth legislature took positive action to place the statutes next to each other, where previously they had been separated, must mean– if it means anything–that the legislature considered the statutes to be related and intended them to be read together.

reader is not elected or appointed, and is not entrusted with any special obligation to the public as demonstrated by an oath. Therefore, while Defendant may have committed some other crime such as theft, similar to cable theft, he did not commit bribery.

California case law helps to further illuminate the difference between public officials and public employees. In *People v. Kerns*, 48 P.2d 750 (Cal. App. 2d 1935), the court considered a challenge to the bribery conviction of a Department of Public Health epidemiologist. The court's decision turned on whether the health department epidemiologist was an "executive officer" subject to prosecution under California's bribery statute. *Id.* In affirming the conviction, the court found that the defendant was an officer because he "exercise[d] . . . one of the sovereign powers of the state, to wit, the police power." *Id.* at 751. The court noted that the defendant had a duty to enforce quarantine regulations, that quarantine violations were punishable as misdemeanors, and that the defendant carried a badge. *Id.* It observed that the defendant's enforcement duties required "the formation of an opinion" that would be "the basis of action in executing the law." *Id.* The court also cited with approval to a California Supreme Court case that found a traffic cop to be a "public officer" as distinguished from a "mere employee, such as a street-sweeper or laborers upon the highway." *Logan v. Shields*, 214 P. 45, 46 (Cal. 1923). This approach to differentiating public officials from public employees is nearly identical to the approach the Commonwealth Supreme Court has taken in determining whether a person is a public official subject to a charge of Misconduct in Public Office under 6 CMC § 3202. *See Commonwealth v. Atalig*, 2002 MP 20; *Commonwealth v. Kaipat*, 2 N.M.I. 322 (1991). In this case, nothing in Mori's job description as a meter-reader would warrant construing him to be a public official capable of performing an "official act."

E. The Government's Arguments in Favor of a Broader Interpretation of "Official Act" Are Unpersuasive.

1. *There is insufficient evidence to support the Government's claim that the Congress of Micronesia intended its bribery statute to reach the acts of low level employees*.

Although the Government concedes that common law bribery was historically limited to acts involving public officials, it argues that common law bribery expanded to criminalize the acts of persons in "almost any government function." (Govt.'s Opp. at 2.) Moreover, the Government argues that this expansion occurred before common law bribery was adopted into the Trust Territory Code,

and subsequently absorbed by the Commonwealth Code.[4] (*Id.)* The Government therefore asserts that the Congress of Micronesia intended its bribery statute, first published in 1953, to criminalize the acts of nonofficials. (*See id.* at 2.) As evidence of this legislative intent, the Government asserts there are two cross-references appearing in the 1970 version of Trust Territory's bribery statute, 11 TTC § 301. (*Id.* at 4, n.4) The first cross-reference is to a California statute, which, at the time, defined the term "bribe" as the following:

> The term "bribe" signifies any money, goods, right in action, property, thing of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his action, vote, or opinion, in any public or official capacity.

See Cal. Penal Code § 7 (historical and statutory notes, applicable in California prior to the minor text amendments in the late 1970's). The Government stresses that the words "any public or official capacity" in the California cross-reference indicates that the Congress of Micronesia intended the term "official act" used in the Trust Territory's bribery statute to have a broader application than its common law roots. (Govt.'s Opp. at 4, n.4.) Because the Commonwealth adopted the text of the Trust Territory's bribery statute without modification, the Government asserts that the Congress of Micronesia's legislative intent is applicable today. (*Id.* at 4.) A problem with this reasoning is that the Government does not assert that the cross-reference appears in the original 1953 edition of the Trust Territory Code, and, furthermore, the reference disappeared with the 1980 edition. Thus, the cross-references may simply be the product of one legal analyst's or librarian's idea of helpful reference material and have nothing to do with the origins of the Trust Territory statute. The cross-reference also does not appear in 6 CMC § 3201, which makes the Government's inference regarding the Commonwealth legislature's intent even more attenuated.

Notably, when the Congress of Micronesia drafted the Trust Territory's bribery statute, it chose words vastly different from California's bribery statute. Although California defined the term "bribe" in Cal. Penal Code § 7, the actual California bribery statute was codified in Cal. Pen. Code § 68. By

---

[4] What is now our bribery statute, 6 CMC § 3201, originated as a legislated act of the Congress of Micronesia in 1952. The present text of 6 CMC § 3201 is identical to the original enactment of section 412 of the Trust Territory Code published in 1953. The text has remained identical in each subsequent enactment of the Trust Territory Code, although its location was changed in the 1970 re-codification to appear in 11 TTC § 301. What is now 6 CMC § 3201 became the law of the Commonwealth by incorporation pursuant to the Constitution of the Northern Mariana Islands Schedule on Transitional Matters, section 2.

1933, California had expanded Cal. Pen. Code § 68 so that it criminalized certain acts involving "[e]very executive or ministerial officer, employee or appointee of the State of California, county or city therein or political subdivision thereof" instead of merely "[e]very executive officer or person elected or appointed to an executive office . . . ." Yet in 1952, nearly twenty years later, the Congress of Micronesia chose not to adopt the more inclusive wording of Cal. Pen. Code § 68 and instead drafted the text which remains in force under 6 CMC § 3201. One conclusion to draw from this difference is that the Congress of Micronesia did not intend the Trust Territory's bribery statute to be as far reaching as California's bribery statute. But even if the Congress of Micronesia did so intend, it did not accomplish this objective by enacting the text that remains in force under 6 CMC § 3201. Unlike California's bribery statute, our bribery statute does not indicate that the act which the payment is intended to influence may be performed by any person so long as it is performed in a public capacity, and it does not specifically include low level employees. 6 CMC § 3201 still requires an "official act." Moreover, the California comparison illustrates that expanding the scope of a bribery statute is properly accomplished legislatively rather than through judicial interpretation.

The second cross-reference relied on by the Government is to a portion of the Export Meat Inspection Act, 25 TTC § 63. This statute criminalized the offering or accepting of any bribe upon a person authorized by the Trust Territory government to administer the Export Meat Inspection Act. The statute criminalized the offering or accepting of bribes by "any inspector, deputy inspector, chief inspector, or other officer or employee of the Trust Territory authorized to perform any of the duties of this chapter." The Government asserts that, because this section expressly applied to lower level government employees, the Congress of Micronesia intended an equally broad application of its bribery statute. Again, it is unclear what weight to give either of these cross-references since the Government does not assert that either of these cross-references appear in the original 1953 edition of the Trust Territory Code, and neither appear in the Commonwealth Code. Thus, the cross-references may not be evidence of the intent of the Congress of Micronesia or the Commonwealth legislature. The Export Meat Inspection Act example also demonstrates that when the Congress of Micronesia intended to bring the acts of low level government employees within the purview of a particular statute, it did so clearly and expressly. It did not do so with the bribery statute.

2. Case law from other jurisdictions does not support the Government's position.

Critically, the Government has not provided any authority in any jurisdiction where a low level employee like Mori was convicted of bribery under a law similar to 6 CMC § 3201. In fact, the Government's cases all involve defendants who were either clearly public officials, bribery statutes that specifically targeted low level employees, or unsuccessful prosecutions. *Lee*, 2005 MP 19 (Defendant's conviction affirmed when court found he paid a public official to influence the decision in a labor case); *Maryland v. Canova*, 278 Md. 483 (1976) (case dismissed against defendant accused of bribing an employee of the Washington Suburban Sanitation Commission because the employee did not fall within a class of persons covered by the Maryland bribery statute); *State v. Ellis*, 33 N.J.L. 102 (1868) (motion to quash indictment denied where defendant paid a public official to vote in favor of allowing him to build a railroad track); *Zacher*, 586 F.2d 912 (Nursing Home Administrator licensed by State of New York had conviction overturned because court did not consider payments to be bribes); *People v. Clougher*, 246 N.Y. 106 (1927) (Secretary to New York's Health Commissioner with "many indicia of a public officer" convicted under a statute which expressly included acts by "any person appointed or employed by or in the office of a public officer who shall in any manner act for or in behalf of any such officer . . . ."). Thus, the Government's argument that "the weight of other authority supports the proposition that acts by regular public employees can qualify as 'official acts' within the reach of common law bribery" is unconvincing. (Govt.'s Opp. at 6.)

3. Even under the broader definition of common law bribery suggested by the Government, Defendant would be entitled to a judgment of acquittal.

The Government argues that, in *Lee*, our Supreme Court cited a common law definition of bribery which supports a broader interpretation of the term "official act." (Govt.'s Opp. at 6, 12.) That definition was drawn from *United States v. Zacher*, 586 F.2d 912, 914 (2d Cir. 1978), and states that common law bribery is the following:

> [T]he voluntary giving or receiving of anything of value in corrupt payment for an official act done or to be done or with the corrupt intent to influence the action of a public official or of any other person professionally concerned with the administration of public affairs.

Zacher, 586 F.2d at 914 (citing 12 Am. Jur. 2d Bribery § 2 (1964) (footnotes omitted)). The Government emphasizes that, in *Lee*, the court stated that "[o]ur bribery statute clearly mirrors this common law definition." *Lee*, 2005 MP 19, ¶ 13. Significantly, the *Lee* court only cited the first

portion of this definition up to "done or to be done." *Id.* Our bribery statute does not mirror the latter part of the definition. Even if 6 CMC § 3201 did mirror the entire *Zacher* definition, however, Mori was not a "person professionally concerned with the administration of public affairs." Mori was not a professional and meter-reading is not a profession. As a meter-reader, Mori testified that his job was to go into the field, record electric meter readings into a handheld device, and return the device to CUC at the end of the day. Mori's job did not involve the administration of anything, much less public affairs. In contrast, the defendant in *Zacher* was a Nursing Home Administrator licensed by the State of New York who was accused of bribery because he had accepted private supplemental payments from families of Medicare patients. *Zacher*, 586 F.2d at 912. Even so, his conviction was overturned after the court refused to expand the scope of the federal bribery statute beyond the legislative language. The court stated that "even if Congress had intended to outlaw such practices, it did not succeed in doing so by passage of [42 U.S.C.S.] § 1396h(b) [the applicable federal statute]." *Id.* at 916. The court ended its analysis by quoting the United States Supreme Court on the necessity of judicial restraint from overreaching into the province of the legislature. It stated that "[t]he spirit of the doctrine which denies to the federal judiciary power to create crimes forthrightly admonishes that we should not enlarge the reach of enacted crimes by constituting them from anything less than the incriminating components contemplated by the words used in the statute." *Id.* at 917 (quoting *Morissette v. United States*, 342 U.S. 246, 249-250 (1952). This Court exercises similar restraint in refraining from interpreting the term "official act" beyond the meaning the term acquired at common law.

4. *Meter-reading is not an official act merely because it is an incidental duty of a public corporation.*

The Government's argument that meter-reading is an "official act" because it is an "incidental duty" of a public corporation is also unconvincing. (Govt.'s Opp. at 8.) This argument depends on the defining an "official act" as any act that must be performed in order for the CUC to carry out its statutorily mandated objective of providing power service to the CNMI. (*Id.* at 8-9.) The Government does not cite any authority for this definition, but instead suggests the following:

> Were the Court to view CUC's metering as anything less than an official act, power consumption would be vulnerable to any private interest willing to usurp the CUC's statutory mandate to 'meter, bill, and collect fees in a fair and rational manner,' by bribing the employee entrusted with obtaining accurate meter reading.

(*Id.* at 9.) This is not true. For example, a person who offers money to a cable repairman to illegally install cable in his house is guilty of theft, not bribery. Similarly, a person who offers money to a CUC meter-reader to steal electricity is guilty of theft, not bribery. Defendant was simply mischarged.

Because the Government cannot prove that Defendant committed bribery, Defendant must also be acquitted of the conspiracy to commit bribery charge.

IV. CONCLUSION

For the foregoing reasons, the Court hereby GRANTS Defendant's motion for a judgment of acquittal in Count I and Count III.

IT IS SO ORDERED this 21st day of December, 2009.

/s/
Perry B. Inos, Associate Judge