

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA

v.

JAMES E. SNYDER

No. 16 CR 160

Judge Gretchen S. Lund

**GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION FOR LEAVE TO
FILE A MOTION FOR A NEW TRIAL**

The UNITED STATES OF AMERICA respectfully submits the following response to defendant's motion for leave to file a motion for a new trial under Federal Rule of Criminal Procedure 33. R. 656.

Defendant was convicted by a jury of his peers with obstructing the IRS on February 14, 2019. At that same time, defendant was acquitted of one bribery count and convicted of another bribery count. After the first trial, the district court granted defendant's motion for a new trial on the bribery count that resulted in conviction. Defendant was once again convicted of bribery in a second trial in 2021. Defendant's tax conviction was affirmed by the Seventh Circuit in 2023. Five years after defendant's tax conviction and four years after defendant's second bribery conviction, the Supreme Court reversed defendant's bribery conviction and remanded the case to the Seventh Circuit. In November 2024, twelve months ago, the Seventh Circuit determined that the evidence was sufficient to support a bribery conviction and remanded the case for a new trial.

Now, after the parties agreed to proceed to sentencing on the tax count and have begun their sentencing advocacy before this Court, defendant seeks leave for

additional motion practice to challenge his 2019 conviction. Defendant wants this Court to grant the extraordinary remedy of overturning a jury's verdict and setting the case for multiple new trials.

But defendant's proposed motion is both untimely and meritless. The Court should thus deny defendant's request for additional motion practice as untimely, or in the alternative, deny defendant's new trial motion on the merits. The sentencing date of January 14, 2026 should stand, as should this Court's order barring any motion practice other than objections to the Presentence Report and sentencing memoranda absent leave of Court. R. 639.

PROCEDURAL HISTORY

Defendant stands before this Court as a convicted felon following jury verdicts in 2019 and 2021. At his first trial, on February 14, 2019, defendant was convicted of felony violations of 18 U.S.C. § 666 (Count Three) and 26 U.S.C. § 7212 (Count Four) and acquitted of an additional count charging violation of 18 U.S.C. § 666 (Count One). R. 256. At his second trial in 2021, which focused only on Count Three, defendant was once again convicted by a jury. R. 508. The Seventh Circuit affirmed the convictions as to both Counts Three and Four. *United States v. Snyder*, 71 F.4th 555 (7th Cir. 2023) ("*Snyder I*").

On June 26, 2024, the Supreme Court held that § 666 applies only to bribery, reversed the judgment of the Seventh Circuit, and remanded the case to the Seventh Circuit for further proceedings. *See Snyder v. United States*, 603 U.S. 1, 10-20 (2024). Contrary to defendant's arguments, (R. 656-2 at 17, 22), the Supreme Court did not

address whether the government’s trial evidence was sufficient to establish bribery. But the Seventh Circuit did on remand and expressly held that “the evidence would support a finding of bribery here, beyond a reasonable doubt.” *United States v. Snyder*, No. 21-2986, 2024 WL 4834037, at *2 (7th Cir. Nov. 20, 2024) (“*Snyder II*”). The Seventh Circuit remanded for a new trial, concluding that the Supreme Court’s decision was “best understood as having found the jury instructions were erroneous because they permitted the jury to convict on a gratuity theory,” which the Supreme Court had foreclosed. *Id.*

On February 5, 2025, this Court set a trial date of September 15, 2025. R. 619. On May 8, 2025, defendant filed a motion for discovery and previewed his intention to file additional motions before sentencing. R. 631. On May 15, 2025, the government submitted a status report requesting that the Court set a sentencing date on Count Four. R. 634. The status report indicated that the government would dismiss Count Three (the § 666 count) at sentencing. *Id.* ¶ 12.

The Court denied defendant’s discovery motion as moot and ordered the case be set for sentencing on September 3, 2025, at which time the government was to dismiss the § 666 count. R. 639. Recognizing that “this long-standing matter should end,” the Court further ordered that, “but for filing objections, if any, to the draft of the new Presentence Report and the parties’ respective sentencing memoranda, all parties must seek leave of this Court before filing any additional motions before sentencing.” R. 639 at 2-3.

Sentencing has since been rescheduled two additional times, both at defendant's request. R. 642, R. 652. Sentencing is currently scheduled for January 14, 2026. R. 654.

On October 31, 2025, approximately two months before sentencing, defendant filed the present motion seeking leave to file a motion for a new trial as to Count Four (the tax count). R. 656.

ARGUMENT

I. DEFENDANT'S MOTION FOR LEAVE SHOULD BE DENIED BECAUSE HIS NEW TRIAL MOTION IS UNTIMELY.

Rule 33 of the Federal Rules of Criminal Procedure provides that a motion for a new trial "grounded on any reason other than newly discovered evidence must be filed within 14 days after the verdict or finding of guilty." A companion rule, Rule 45, provides that "when an act must or may be done within a specified period," the court may extend the time, either "before the originally prescribed or previously extended time expires" or "after the time expires if the party failed to act because of excusable neglect." Fed. R. Crim. P. 45(b)(1).

The Supreme Court has held that these time limits, while not jurisdictional, are "inflexible" claims processing rules and that "district courts must observe the clear limits of the Rules of Criminal Procedure when they are properly invoked" by the government. *Eberhart v. United States*, 546 U.S. 12, 17 (2005). These claims processing rules "assure relief to a party properly raising them" *Id.* at 19. The government asserts this procedural bar here.

Defendant cannot demonstrate that his delay is excusable. The Supreme Court reversed and remanded defendant's case on June 26, 2024, nearly a year-and-a-half before defendant filed the present motion. The Seventh Circuit reversed and remanded on November 20, 2024, nearly one year ago. And the government made clear on May 15, 2025, that it did not intend to re-try the § 666 count provided defendant is sentenced on the tax count. R. 634. Defendant has had nearly twelve months to raise the arguments that he now advances, yet he failed to do so until after the parties had begun submitting documents related to his re-sentencing. *See* R. 644, 645, 658 (the parties' objections to the Presentence Investigation Report). Defendant cannot show excusable neglect under Rule 45, and the Court should deny defendant's motion to re-open briefing on his 2019 conviction on that basis alone.

Moreover, and as discussed in more detail below, none of defendant's arguments are new, which further demonstrates that defendant's untimely arguments are not the result of excusable neglect. Defendant could have filed a pre-trial motion alleging improper joinder or seeking severance but chose not to do so. As to defendant's purported *Brady* argument, this argument was raised at his first trial and expressly rejected by the Seventh Circuit in 2023.

Defendant's motion is a meritless effort to further delay his sentencing. The Court should deny his motion for leave as untimely.

II. DEFENDANT'S NEW TRIAL MOTION LACKS MERIT

In the alternative, defendant's Rule 33 motion for a new trial lacks merit, and his motion for leave can likewise be denied on that basis.

A. Defendant's Retroactive Misjoinder Argument Lacks Merit.

“A jury verdict in a criminal case is not to be overturned lightly.” *United States v. Santos*, 20 F.3d 280, 285 (7th Cir. 1994) (internal quotation marks omitted). Overturning a conviction and ordering a new trial pursuant to retroactive misjoinder is an “extraordinary” remedy primarily reserved for cases where, as defendant acknowledges, counts are “invalidated” on appeal. R. 656-2 at 2, 5, 7, 8. Because the federal program bribery conviction was not invalidated on appeal, and because there was likewise no prejudicial spillover, this Court should decline defendant’s invitation to grant such an extraordinary remedy.

Retroactive misjoinder is recognized where the defendant did not have any reason or opportunity to challenge joinder before trial. Two rules contemplate issues of joinder and severance. Under Federal Rule of Criminal Procedure 8(a), an indictment “may charge a defendant in separate counts with 2 or more offenses if the offenses charged . . . are of the same or similar character . . . or are connected with or constitute parts of a common scheme or plan.” Fed. R. Crim. P. 8(a). As the Seventh Circuit has observed, “there is a strong policy preference in favor of joinder of qualifying charges and [] the rule must be broadly construed toward that end.” *United States v. Alexander*, 135 F.3d 470, 476 (7th Cir. 1998). Under Federal Rule of Criminal Procedure 14(a), for properly joined offenses, a court may order separate trials of counts. Fed. R. Crim. P. 14(a).

Here, defendant failed to raise the issue of misjoinder or severance before trial in 2019. “The time to decide whether it is fair to subject a defendant to a single trial for a variety of crimes, given the risk that evidence introduced to support some of

these crimes may infect the jury's consideration of the others, is *before trial*, when the defendant can complain of misjoinder under Fed. R. Crim. P. 8(a) or move for a severance under Rule 14." *United States v. Holzer*, 840 F.2d 1343, 1349 (7th Cir. 1988) (emphasis added); *see also United States v. Black*, 625 F.3d 386, 390 (7th Cir. 2010) ("[T]he time to sever a trial because of a prejudicial spillover from one count to another is *before the trial begins*.") (emphasis added).

Indeed, defendant's contention that the "§ 666 counts and tax counts shared no proper evidentiary nexus," (R. 656-2 at 9), even if true, could have easily been made prior to trial. Instead, defendant made a strategic decision prior to trial to proceed to trial on all counts, rather than arguing improper joinder or seeking severance.¹ Defendant thus waived any claim to improper joinder by failing to make this argument before trial. *See Santos*, 20 F.3d at 285 (citing *Holzer* and observing that while the defendant filed a motion for severance of drug and money laundering offenses pre-trial, he failed to file a similar motion upon the return of a superseding indictment, and affirming the district court's denial of defendant's Rule 33 motion based on misjoinder).

¹ This was an appropriate strategic move. *See, e.g., Pena v. United States*, 192 F. Supp. 3d 483, 490 (S.D.N.Y. 2016) (denying ineffective assistance claim and finding that "[t]rial Counsel made a strategic decision not to move for severance of [one defendant's] case from [another defendant's] for separate trials"); *Oppedisano v. United States*, No. 13-CV-0161 JS, 2013 WL 4052828, at *6 (E.D.N.Y. Aug. 12, 2013) (finding counsel's decision not to seek severance was "a strategic decision that was not prejudicial," and noting that the fact that jury acquitted defendant of one count showed "that counsel's strategy may have paid off").

Waiver aside, a finding of retroactive misjoinder or prejudicial spillover is not appropriate here, where the jury was properly instructed and the jury acquitted defendant of one of the bribery counts. As the Seventh Circuit held when discussing the potential for prejudicial spillover, “a defendant must overcome the dual presumptions that a jury will capably sort through the evidence and will follow limiting instructions from the court to consider each count separately.” *United States v. Peterson*, 823 F.3d 1113, 1124 (7th Cir. 2016). Defendant cannot do so here.

Defendant fails to cite to a single case – and the government is aware of none – where a court overturned a conviction based on retroactive misjoinder or prejudicial spillover where the jury returned a mixed verdict.² Instead, courts consistently reject attempts to overturn convictions based on retroactive misjoinder or prejudicial spillover where the jury demonstrated that it carefully considered the evidence as to each count. For example, in *Peterson*, the Seventh Circuit found that the defendant failed to overcome either presumption because the trial court instructed the jury to consider each charge separately, and the jury demonstrated its ability to comply with that instruction by only returning a guilty verdict on some of the charged counts. *Id.*; see also *United States v. Kelly*, 99 F.4th 1018, 1026 (7th Cir. 2024) (rejecting “prejudicial spillover theory” because the jury was instructed to consider each charge separately and the jury acquitted the defendant on seven counts); *United States v.*

² In the context of pretrial severance motions, the oft-cited “evidentiary spillover” theory has been rejected in this Circuit. See, e.g., *United States v. Abdelhaq*, 246 F.3d 990, 992 (7th Cir. 2001) (“[A]s a basis for requiring severance, ‘evidentiary spillover’ has been rejected.”); *United States v. Shorter*, 54 F.3d 1248, 1259 (7th Cir. 1995) (“Such ‘spillover’ claims alone do not warrant severance.”).

Stefan, 784 F.2d 1093, 1101 (11th Cir. 1986) (finding that “the jury carefully weighed the evidence” and holding that court finding of insufficient evidence on RICO charge did not taint jury where jury acquitted the defendant on other counts); *United States v. Ivic*, 700 F.2d 51, 65 (2d Cir. 1983) (observing that an acquitted RICO count could *potentially* taint remaining counts of conviction but finding that the jury’s acquittal on one count indicated that it was not unduly tainted by the racketeering evidence) (abrogated on other grounds by *Nat’l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 254 (1994)).

Here, as defendant acknowledges (R. 656-2 at 10), the trial court properly instructed the jury to consider each count separately. *See* R. 254, Instruction No. 18 (“You must consider each charge and the evidence concerning each charge separately. Your decision on one charge, whether it is guilty or not guilty, should not influence your decision on any other charge.”). And “[t]here is a rebuttable presumption that the jury followed” the court’s instructions. *United States v. Marchan*, 935 F.3d 540, 548 (7th Cir. 2019).

The jury’s mixed verdict (acquitting defendant of Count One and convicting defendant of Counts Three and Four) indicates that the jury followed the trial court’s instructions and meaningfully and separately considered the evidence related to each count. *See United States v. Dworken*, 855 F.2d 12, 29 (1st Cir. 1988) (“Although such a discriminating verdict is not dispositive on the question of whether a severance should have been granted, it demonstrates the jury’s ability to segregate the evidence

and carefully weigh against which defendant it was applicable.”) (internal citation and quotation marks omitted).

The Seventh Circuit addressed an analogous situation in *Black* and affirmed the district court’s denial of the defendant’s motion for a retrial on a count of conviction for obstruction of justice. In addition to obstruction of justice, the defendant had also been convicted of fraud offenses. 625 F.3d at 388. After the jury’s verdict and the Seventh Circuit’s affirmance of the convictions, the Supreme Court held that § 1346 (the honest services fraud statute) required a bribe or kickback. *See Skilling v. United States*, 561 U.S. 358, 412 (2010). The Supreme Court’s decision called into question one theory propounded (and one set of jury instructions read) as part of the fraud charges, and the defendant argued that the instructions on honest services fraud prejudiced the jury on the obstruction of justice count. *Black*, 625 F.3d at 390. The Seventh Circuit disagreed and reasoned that the strength of the evidence on the obstruction of justice count and the common understanding of honest services fraud at the time the case was tried indicated that the jury was not “poison[ed]” by the errant instruction. *Id.* The obstruction of justice conviction was upheld even though the Seventh Circuit ordered a retrial on two fraud convictions, finding that the jury may have convicted the defendant based on a now-invalid theory of liability. *Id.* at 393-94.

Relying on standards articulated by the Second and Third Circuits (R. 656-2 at 7-8), defendant attacks the strength of the government’s evidence on the tax count, contends that bribery evidence and the use of the term “bribe” was unduly prejudicial,

and alleges now – for the first time – that there were instructional errors. None of these arguments withstands scrutiny.

First, contrary to defendant’s argument (R. 656-2 at 18-20), ample evidence supported the jury’s finding of guilt under 26 U.S.C. § 7212, which was affirmed by the Seventh Circuit. *See Snyder I*, 71 F.4th at 571-72. Specifically, the court held that:

The jury could conclude that Snyder impeded or attempted to impede the IRS’s collection of owed taxes in two ways. First, with respect to his payroll tax debt, he diverted reimbursement payments from GVC Mortgage directly to SRC Properties, thereby evading the IRS’s levy on First Financial Trust Mortgage’s bank account. Second, with respect to his personal taxes, Snyder failed to report his ownership of SRC Properties and his employment with GVC Mortgage on 433-A forms he submitted to the IRS. The jury could reasonably conclude that misrepresenting assets and income in settlement and installment-plan negotiations with the IRS could have the effect of impeding the IRS’s collection efforts. Finally, the jury could conclude that Snyder acted with the intent to gain an unlawful advantage. The evidence established multiple omissions on his 433-A forms. It also established that he opened the SRC bank account soon after he started working for GVC Mortgage and that he directed payments to SRC over several years, all while concealing his ownership of SRC from the IRS.

Id. at 571-72. Defendant argues that there was limited testimony and evidence on the tax counts, but the jury plainly found the government’s evidence sufficient, and the Seventh Circuit agreed that it was. This Court should decline defendant’s invitation to re-weigh the strength of the evidence underlying the tax conviction.³

³ Defendant did not seek certiorari to the Supreme Court of the Seventh Circuit’s rulings related to the tax count and only defendant’s § 666 count was reversed by the Supreme Court. *See Snyder v. United States*, No. 21-2986, Aug. 3, 2023 (U.S.) (Snyder’s petition for certiorari); *Snyder II*, 2024 WL 4834037, at *1 (noting that the Supreme Court had “reversed Snyder’s conviction under 18 U.S.C. § 666 . . .”). Accordingly, his tax conviction still stands, and Snyder is foreclosed from challenging the sufficiency of the evidence under the law of the case doctrine. *See United States v. Husband*, 312 F.3d 247, 250-51 (7th Cir. 2002) (noting that “any issue conclusively decided by this court on the first appeal is not remanded” and thus cannot be relitigated); *United States v. Faulkner*, 885 F.3d 488, 496 (7th Cir. 2018).

Second, the government’s evidence and argument regarding defendant having received a “bribe” was not “pejorative” (R. 656-2 at 18), but was consistent with the evidence and the law. In effect, defendant claims the jury was prejudiced by the government’s references to “bribery” related to Counts One and Three, while at the same time claiming that the government was *not* actually relying on a bribery theory as to Count Three. Moreover, defendant acknowledges that arguments regarding defendant receiving a bribe were appropriate with respect to Count One. *See* R. 656-2 at 10, 17 (“That characterization [of bribe payments], however, was facially inaccurate *as to Count 3.*”) (emphasis added). Thus, defendant concedes that the jury appropriately heard evidence and argument about “bribery” related to Count One, which would have been admitted irrespective of the Supreme Court’s subsequent ruling. And, as discussed, the jury considered that evidence and acquitted defendant, demonstrating its ability to separate out the evidence for each count.

Defendant attempts to distinguish Counts One and Three (R. 656-2 at 14), but his argument misses the mark. No court, including the Supreme Court, found that Count Three “was not criminal as a matter of law.” *Id.* Rather, the Seventh Circuit concluded that “the evidence would support a finding of bribery here, beyond a reasonable doubt” and that the Supreme Court’s decision was “best understood as

(finding law of the case doctrine applied and declining to revisit argument decided in prior direct appeal); *United States v. Croft*, 87 F.4th 644, 647 (5th Cir. 2023) (after Supreme Court remanded on certain counts of conviction, only those counts would be reconsidered); *Young v. Weston*, 344 F.3d 973, 976 (9th Cir. 2003) (failure to seek certiorari to the Supreme Court on an issue precludes relitigating issue on remand). Defendant implies that the Supreme Court’s ruling regarding § 666 may have somehow altered the Seventh Circuit’s analysis of the sufficiency of the evidence on the tax count. R. 656-2 at 14 n.14. Defendant’s argument is entirely speculative and unsupported.

having found the jury instructions were erroneous because they permitted the jury to convict on a gratuity theory.” *Snyder II*, 2024 WL 4834037, at *2. Thus, both Counts One and Three were legally viable, and bribery evidence was appropriately presented to the jury for both.

Third, there was no error regarding the jury instructions, and certainly none that prejudiced the jury on the tax offense. Contrary to defendant’s argument (R. 656-2 at 11), the term “corruptly” was separately defined for each count. As to the § 666 counts, the trial court instructed the jury that “[a] person acts corruptly when he acts with the understanding that something of value is to be offered or given to reward or influence him in connection with his official duties.” *See* R. 254, Instruction 22. As to the tax offense, the trial court instructed the jury that “corruptly” means “with the purpose to obtain an unlawful benefit for himself or someone else.” *See id.*, Instruction 27. Both of these definitions were Pattern instructions. Defendant did not challenge the Pattern definition of “corruptly” with regard to the tax offense at trial or on appeal, nor did he claim that the instructions somehow confused the jury. He should not be permitted to do so now.

B. Defendant’s Arguments Concerning A Claimed “*Brady* Violation” Were Already Rejected by the Seventh Circuit.

Defendant’s purported “*Brady*” argument is a retread of an argument raised in 2019 before the district court and rejected by the Seventh Circuit in 2023. Defendant failed to assert this claim before the Supreme Court. And defendant advances no new facts or arguments. This Court should, once again, find his allegations meritless.

Defendant argues that the government failed to produce attachments to the 2013 Form 433-A, which was one of three false Form 433-As that defendant submitted to the IRS. R. 656-2 at 25. Indeed, the Seventh Circuit rejected this exact argument in affirming defendant's tax conviction. *See Snyder I*, 71 F.4th at 571-73. Defendant argued before the jury and then the Seventh Circuit that he did not omit information on the 433-A forms he submitted to the IRS, and that "[i]n his accountant's copy of the 433-A form submitted in 2013, his ownership of SRC was reported on a page that is missing from the IRS's copy. He suggests that pages or attachments might also be missing from the 2010 and 2011 forms that reported his employment with GVC Mortgage and his ownership of SRC." *Id.* at 572. The court rejected this argument, holding that:

while the jury might have credited Snyder's assertions that he reported his ownership of SRC Properties on pages or attachments that were missing from the IRS's files, the jury was not required to draw that conclusion. The revenue agent testified that Snyder should have reported his ownership of SRC Properties at several places on the 433-A form he submitted in 2013, not just on the page missing from the IRS's copy. The jury might also have rejected Snyder's argument given that he failed to report his ownership of SRC Properties on the 433-A forms he filed in 2010 and 2011 as well.

Id. at 572-73.

The Seventh Circuit's findings are binding under the law of the case doctrine, and there is no basis to relitigate those findings. *See Husband*, 312 F.3d at 250; *Faulkner*, 885 F.3d at 496. Based on a review of IRS records, the version of the 2013 Form 433-A in the IRS's possession did not include the attachment included in defendant's accountant Daniel Pickhart's version. Even so, there is no possible

prejudice because the jury *was* presented the version of the 2013 Form 433-A from defendant's accountant, and the government elicited testimony that Pickhart's version, with attachments, was the version submitted to the IRS. R. 231, Vol. 3 Tr. at 64:9-12; GX29C.⁴

In addition, the question of what defendant submitted to the IRS is a matter within defendant's control. *See, e.g., United States v. Dawson*, 425 F.3d 389, 393 (7th Cir. 2005), on reh'g in part, 434 F.3d 956 (7th Cir. 2006) ("*Brady* requires disclosure only of exculpatory material known to the government but not to the defendant."). There was no *Brady* violation for this additional reason.

Defendant's speculation that he *might* have submitted additional material to the IRS has not been borne out by a review of IRS records. Accordingly, even if there was a *Brady* violation (and there was not), defendant cannot show "a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States v. Johnson*, 65 F.4th 932, 943 (7th Cir. 2023). In short, defendant's belated *Brady* claim is meritless.

⁴ Indeed, Pickhart recognized that the 2013 Form 433-A that defendant submitted was false, even when considering the attachments. R. 658 at 7-8 (government's response to defendant's objections to the PSR).

CONCLUSION

Defendant's meritless efforts to relitigate his guilty verdict on the eve of sentencing should likewise be rejected.

Respectfully submitted,

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