IN THE
UNITED STATES DISTRICT COURT, FOR THE
NORTHERN DISTRICT OF INDIANA,
HAMMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
v. Plaintiff,	)	No. 2:16 CR 00160-GSL-JEM
	)	
	)	
	)	
JAMES E. SNYDER,	)	
	)	
Defendant.	)	

JAMES SNYDER'S RESPONSE TO THE GOVERNMENT'S STATUS REPORT

JAMES SNYDER, through counsel, agrees with the government that the interests of justice call for a swift end to this nearly decade-old case; however, we part ways with the government when it privileges itself to ask again for a sentencing based on disproved allegations that Mr. Snyder committed bribery, and further intends to withhold dismissal of Count 3 to see "[i]f defendant is sentenced as to Count 4" whereupon "the government will move to dismiss Count 3 after imposition of sentence." This condition holds the defendant [and the Court] hostage until the government is satisfied that a sufficient penalty is imposed, before it commits to giving up on a third jury trial of Count 3 (Corrupt Solicitation of a Thing of Value)[1]. Apart from pointedly ignoring the Supreme Court's determination that the conduct for which he was convicted was not a crime, this is neither fair nor just.

[1] The government, in its status report, repeatedly and misleadingly recharacterizes Count 3 as "Federal Program Bribery," in contradiction of the original Counts 1 and 2, where it specifically differentiated Count 3 by referring to it in its heading as (Corrupt Solicitation of a Thing of Value).

At sentencing in this case, the government sought to have Mr. Snyder sentenced under the bribery guideline. The District Court rejected the government's position and found that while the Court was required to consider only the government's case in ruling as it did on the Rule 29 motion, both sides could be considered when deciding whether to apply the bribery guideline, or the gratuity guideline at sentencing. Sen. Tr. 111-112. Which way the jury decided was unknown. The Court rejected the government's argument, instead agreeing with the recommendation of the probation officer and applied U.S.S.G. §2C1.1, the gratuity guideline, and began its calculation with a base offense level of 11. The government is certainly possessed of no more evidence now than it had at the time of the first sentencing in support of its argument that Mr. Snyder should be sentenced as if the alleged gratuity were a bribe. The government's continuing attempt to apply the bribery guideline without obtaining a bribery conviction smacks of vindictiveness. This path also suggests that the government ignores both the Supreme Court's decision and the Seventh Circuit's finding on remand that "[w]e do not intend to foreclose a future challenge to the indictment, but we are not persuaded at this point that the indictment either failed to allege an offense or committed the government to a gratuity-only theory."

The United States Supreme Court rejected the Seventh Circuit's decision in the case and found that Mr. Snyder had been charged with a gratuity, tried for a gratuity, and convicted for a gratuity, none of which should have occurred because the Court ultimately held that Title 18, United States Code, Section 666 applies

only to *quid pro quo* bribery. The Supreme Court very pointedly did not find that sufficient evidence supported a bribery conviction, or that based on the Seventh's Circuit's findings, harmless error applied to save the conviction.

Mr. Snyder asks this Court to exercise its supervisory authority to dismiss Count 3 (Corrupt Solicitation of a Thing of Value) with prejudice prior to sentencing and to bar the government from trying yet a third time to achieve what it has been unable to do to date - prove that Mr. Snyder committed the offense of bribery.

In the alternative, Mr. Snyder asks this Court to consider either of two alternatives: (1) to reconsider Mr. Snyder's original motion to dismiss the indictment in light of the Supreme Court's decision, changing the interpretation of Title 18, United States Code, Section 666; or (2) to grant Mr. Snyder's recent *Brady* motion, Dkt. 631, and set a briefing schedule post-production on a Motion to Dismiss Count 3 (Corrupt Solicitation of a Thing of Value). Mr. Snyder seeks the opportunity to demonstrate his good faith understanding that the government never even sought to prosecute Mr. Snyder for bribery in Count 3 (Corrupt Solicitation of a Thing of Value). Instead, it explicitly charged him with a lesser-included aspect of §666 – gratuity – even as it loudly and prejudicially proclaimed to juries throughout the course of two trials that Mr. Snyder had engaged in "bribery." The government repeatedly made such inflammatory allegations while it simultaneously denied to the district judges that it had any legal obligation to prove what is the essence of bribery, some evidence of a *quid pro quo*. Granting Snyder's *Brady* motion will, we believe, confirm what the government would prefer to keep under seal, while smearing him

with allegations of relevant conduct at sentencing on the tax count: that it always viewed Count 3 solely as a gratuity allegation, contrary to its claims to the court of appeals that Snyder was also charged with a bribe.

In further support of his request, Mr. Snyder, through counsel, states the following:

I. This Court has the inherent- or supervisory - authority to dismiss Count 3 (Corrupt Solicitation of a Thing of Value) prior to sentencing in the interests of justice and finality.

In the exercise of its supervisory authority, a federal court, "guided by considerations of justice ... may, within limits, formulate procedural rules not specifically required by the Constitution or the Congress." *United States v. Hasting*, 461 U.S. 499, 505 (1983), but "[e]ven a sensible and efficient use of the supervisory power ... is invalid if it conflicts with constitutional or statutory provisions," *Thomas v. Arn*, 474 U.S. 140, 148 (1985). When validly invoked, the purposes underlying the use of supervisory powers are threefold: (1) to implement a remedy for violations of recognized rights, (2) to preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before the jury, and (3) to deter illegal conduct. *Hasting*, 461 U.S. at 506.

The exercise of inherent authority must satisfy two requirements: (1) it "must be a reasonable response to the problems and needs confronting the court's fair administration of justice," and (2) it "cannot be contrary to any express grant of or limitation on the district court's power contained in a rule or statute." *Dietz v. Bouldin*, 136 S. Ct. 1885, 1892 (2016). This means the Court may not use its

supervisory authority in a way that contradicts a duly enacted Rule of Criminal Procedure. *Carlisle v. United States*, 517 U.S. 416 (1996).

This Court would not contradict any rule by granting Mr. Snyder's Motion to Dismiss Count 3 (Corrupt Solicitation of a Thing of Value). Rule 31(b)(3) grants the government the right to "retry any defendant on any count on which the jury could not agree," but that is not the posture of this case. *See United States v. Wright*, 913 F.3d 364, 368 (3d Cir.), cert. denied, 140 S. Ct. 627 (2019) (trial court lacked supervisory authority to dismiss case after two deadlocked juries). In keeping with *Hasting* the government has already informed this Court that dismissal of Count 3 is in the interests of justice and Mr. Snyder agrees.

The District Court for the District of Columbia recently applied the approach that Mr. Snyder asks this Court to adopt. In *United States v. Brock*, 2025 U.S. Dist. LEXIS 4556 (January 29, 2025), both parties agreed that Brock's conviction under Title 18, United States Code, Section 1512, for obstructing justice by participating the January 6, 2021, attack on the Capitol, had to be dismissed because the Supreme Court in *Fischer v. United States*, 603 U.S. 480, 144 S. Ct. 2176, 219 L. Ed. 2d 911 (2024), rejected the interpretation and application of the statute taken by the D.C. District Court and affirmed by the Court of Appeals. *Fischer* was decided while Brock was on remand for resentencing.

The parties each urged the District Court to take a different path to dismissal. Rather than adopt either proposed approach, the Court decided to exercise its inherent authority and *grant* Brock's original Motion to Dismiss, which

had been based on the same interpretation of Section 1512 that was subsequently adopted by the Supreme Court, but which the District Court had denied at the time it was first presented to the Court. The District Court stated:

> Recall that, before trial, Brock presented the Court with exactly the theory of § 1512 that would eventually prevail in Fischer. The Court, however, applied what was then the dominant understanding of that statute, explaining that there was no basis in the statutory text for limiting its prohibitions to activity endangering the availability or integrity of records, documents, or evidence. Brock, 628 F. Supp. 3d at 91. But it was Brock's view, not this Court's, that prevailed at the Supreme Court.
>
> So the Court now exercises its inherent authority—unbounded by either a final judgment or the mandate rule, as explained above—to reconsider its earlier ruling on the motion to dismiss. *See, e.g., McNamara v. Nat'l R.R. Passenger Corp.*, Civ. A. No. 87-236 (JHP), 1987 WL 14594, at *1 (D.D.C. July 17, 1987) (sua sponte reconsidering ruling on motion to dismiss after intervening and binding appellate authority). There is no need for much ink. The Court should reconsider its earlier ruling if, among other things, "an intervening change in controlling law" or "a need to correct clear error or prevent manifest injustice" demands it. *United States v. Entrekin,* Crim. A. No. 21-686 (RDM), 2023 U.S. Dist. LEXIS 227832, 2023 WL 8827069, at *1 (D.D.C. Dec. 21, 2023) (internal quotation marks omitted). Both are true here. After *Fischer*, the Court's earlier ruling on the motion to dismiss was incorrect—and clearly so.

United States v. Brock, 2025 U.S. Dist. LEXIS 4556, *7-8.

Similarly, in Mr. Snyder's case, prior to his first trial, he filed a Motion to Dismiss Counts 1[2] and 3 (Corrupt Solicitation of a Thing of Value), Dkt. 129, in which he asserted that Title 18, United States Code, Section 666 was solely a bribery statute and did not apply to cases involving gratuities such as the offenses with which he was charged. This interpretation was against the then-dominant

[2] Mr. Snyder was found not guilty of Count 1 at trial.

understanding in the Seventh Circuit and others, but followed the path forged by the First and Fifth Circuits and subsequently adopted by the United States Supreme Court in *Snyder v. United States,* 603 U.S. 1 (2024). The District Court's original decision proved to be incorrect. The decision can and should be reconsidered and the Motion granted by this Court.

II. This Court has the authority to grant Mr. Snyder's *Brady* motion and proceed with a briefing schedule on a renewed Motion to Dismiss Count 3 (Corrupt Solicitation of Thing of Value).

If this Court does not wish to exercise its inherent authority to dismiss Count 3 prior to sentencing, Mr. Snyder asks this Court to grant his *Brady* motion, seeking discovery of the Grand Jury record, so that he can supplement his original Motion to Dismiss with additional evidence that the government did not seek or ask the grand jurors to return an indictment alleging *quid pro quo* bribery as to Count 3. This approach is in keeping with the Seventh Circuit's opinion on remand, in which it explicitly stated that it did not foreclose any challenge by Snyder to the indictment because "we are not persuaded at this point that the indictment either failed to allege an offense or committed the government to a gratuity-only theory." Appellate Dkt. 79, p. 2.

As outlined in Mr. Snyder's memorandum in support of his *Brady* request for Grand Jury records, Mr. Snyder has a good faith basis for believing that, as to Count 3, the government did not present sufficient evidence to the grand jury to obtain a charge for *quid pro quo* bribery and sought instead to pursue the charge exclusively as a gratuity rather than a bribe. Dkt. 631 and 632. In fact, the immunized grand jury

testimony of the Buha brothers [the alleged bribe givers] flatly contradicted the government's bribery theory -- testimony that the government later claimed that it did not believe to be truthful.

If Mr. Snyder can further substantiate with grand jury evidence what appears to be true based on the government's interactions with his first attorney and with the evidence presented at the first trial, the government would necessarily have to re-indict Mr. Snyder prior to proceeding to a third trial – he cannot be tried for conduct he was not charged with committing. Of course, re-indictment would then be subject to statute of limitations and constitutional Speedy Trial defenses. The interests of justice, now nine years into a single case, as recognized by the parties, strongly militates against a third trial and in favor of a dismissal that is true, final, and just.

III. Using Title 18, United States Code, Section 3553(a) to allow the government to achieve through the back door what it cannot achieve directly, will result in the equivalent expense, time, and effort of a third trial, applying a lesser burden of proof, in violation of Mr. Snyder's constitutional and statutory rights.

The government persists in wanting to argue that Mr. Snyder was guilty of bribery despite never having met its burden of proof, and it enlists this Court's assistance through the sentencing process, at a lower standard of proof, in an effort to penalize Mr. Snyder for an offense to which he does not admit and for which no jury can be said to have found him guilty. The government seeks a higher penalty for Mr. Snyder than he originally received, confirming to him its vindictiveness, rather than a true recognition of the interests of justice.

Judge Kennelly, the District Judge who sentenced Mr. Snyder, based his guideline determinations on a finding that the gratuity guideline, not the bribery guideline, was applicable in his case. The bribery guideline, §2C1.1, calls for a base offense level of 14, while the gratuity guideline, §2C1.2, begins with a base offense level of 11. This 3-level difference converts to an increase of 7 to 13 months more than the original sentence in the case, without achieving a corresponding bribery conviction. This would violate Mr. Snyder's right to substantive Due Process and his right to fair trial under the Fifth and Sixth Amendments to the United States Constitution.

Allowing the government to "prove a bribe" at sentencing is fundamentally unfair in this case. Essentially, the proof would amount to referencing the same evidence it would have to use at trial. This would require a more vigorous defense, even as Snyder has lost testimony of some key witnesses to fading memories, death or illness. The time and expense to Snyder of again defending against the government's proof at sentencing would be the same as re-trying the case, only a lesser standard of proof would apply, and a judge rather than a jury would be the sole decision-maker. Or the government may seek to argue its case without any witnesses for Mr. Snyder to confront, making it even more difficult for this Court to make credibility-based decisions that are critical in a case such as this, where *no direct testimony supports the government's theory* and speculation is required to make sense of the circumstantial evidence.

This approach also fails to consider the Supreme Court's decision, finding unequivocally that Mr. Snyder was tried for and convicted of a gratuity, not a bribery, offense. In delivering the opinion of the Court, Justice Kavanaugh unequivocally stated the Title 18, United States Code, Section 666 does not make it a crime for state and local officials to accept gratuities ((giving or receiving a thing of value because of an action already completed). 603 U.S. ___ ; 144 S.Ct. 1947, 1951 (2024). "Rather, §666 leaves it to state and local governments to regulate gratuities to state and local officials." *Id.* Yet, "Snyder has never been charged by state prosecutors for bribery. And he has never been charged or disciplined by Portage for violating the City's gift rules. **The Federal Government charged, and a federal jury convicted Snyder of accepting *an illegal gratuity* (the $13,000 check from Peterbilt) in violation of 18 U.S. C. §666(a)(1)(B)."** Justice Gorsuch concurred with the opinion of the Court but went further to state that "the bottom line is that, for all those reasons, any fair reader of this statute would be left with a reasonable doubt about whether it covers the defendant's charged conduct." *Snyder,* 144 S.Ct. at 1954 (emphasis supplied).

In rejecting the government's position, the Supreme Court emphasized that the government's interpretation of the statute "moved the Government from one sinkhole to another. The flaw in the Government's approach – and it is a very serious real-world problem – is that the Government does not identify any remotely clear lines separating an innocuous or obviously benign gratuity from a criminal gratuity." *Snyder,* 144 S.Ct. at 1957. The Supreme Court also was critical of the

government's emphasis on the inclusion of both the terms "rewarded" and "influenced" in the statute as a way of clarifying the application of the statute to both bribes [influenced] and gratuities [rewarded]. The Court resolved the issue by focusing on the use of the term "corruptly" as it was used on 18 U.S.C. § 201(b) to indicate that it references bribery, since the § 201(c)-provision applying to federal gratuities cases does not contain or require proof of that momentous and consequential element: evidence of a *quid pro quo*. The timing of the agreement, not the timing of the payment is what distinguishes a bribe from a gratuity. *Snyder,* 144 S.Ct. at 1959.

In short, the Supreme Court's ruling should have foreclosed any possibility that this Court might now consider whether Mr. Snyder's conviction could be upheld under a bribery theory, or that he should be sentenced for having accepted a *quid pro quo* bribe in the absence of a conviction thereon.

First, as described above, the Supreme Court's majority opinion described this as a gratuities case. Indeed, the three-member dissent would have merely vacated and remanded to this Court. *Snyder v. United States*, 144 S. Ct. 1947, 1968 n.6 (2024) (Jackson, J., dissenting). The majority purposefully went further, "deci[ding] to reverse Snyder's conviction, rather than vacate and remand." *Id.* The majority's decision to fully reverse is consistent with Justice Kavanaugh's description of the case as one involving a gratuity, and Justice Gorsuch's point that any fair reader would have a reasonable doubt that Snyder's charged conduct was prohibited. In other words, allowing this count to proceed yet again would be

consistent with the dissent's view, but would be inconsistent with the majority's view.

Secondly, as early as September 21, 2018, R. 129, when Mr. Snyder first challenged the government's interpretation of the statute and asked for a bill of particulars, the government refused to provide a response, claiming that the law did not require it. R. 137 at 4 ("The government declines to respond substantively to points (1) and (2) above because Defendant's conclusion that § 666 does not cover gratuities is directly contradicted by binding precedent"). Yet, the government repeatedly described this as a gratuities case. Lacking evidence of an agreement between the Buhas and Mr. Snyder *in advance of* the bidding and awarding of contracts, the government emphasized repeatedly the fact that Mr. Snyder asked for work and was provided payment from the Buhas only *after* the contracts had been awarded to Peterbuilt. R. 273 at 7 (prosecutor's Rule 29 response, "That timing strongly suggested the payment was made in exchange, *or as a gratuity*, for the lucrative garbage truck contracts GLPB had received" (emphasis added)).

Indeed, the government's final description of the case in closing rebuttals continued its gratuity theme. R. 581, p. 2150 ("when times got tough, he doesn't go out and work at McDonald's like a regular, everyday person would do, get a second job and work hard for a living. *He showed up to a business he had just done a favor for and said: I need money*" (emphasis added)). The conduct for which showing up to a business for which one had just done a favor and asking for money constitutes a

"gratuity"—the Supreme Court has now unequivocally held that such conduct is not a crime under § 666.

Finally, the District Court, in sentencing Mr. Snyder for Count 3, found by a preponderance of the evidence that Mr. Snyder had been convicted of a soliciting a gratuity and not of participating in bribery for the purpose of applying the appropriate sentencing guideline provision. R. 586, p. 111.

After the government's insouciant back-handing of Snyder's motion for a bill of particulars back in 2018, which sought to address this very issue, it would be fundamentally unfair now to permit the prosecution to recast its allegations at sentencing – and after two trials – as if all along it had meant to allege a bribery case. *See, e.g., See Econ. Folding Box Corp*., 515 F.3d 718, 721 (7th Cir. 2008) (finding an argument raised for the first time on appeal to be waived because the party must "accept the consequences of [its] decision" to present its claims under one legal theory instead of another), cited in, *Broaddus v. Shields*, 665 F.3d 846, 854 (7th Cir. 2011); *Art Akiane LLC. v. Art & SoulWorks LLC*, 2021 WL 5163288, at *1 (N.D. Ill. Nov. 5, 2021) ("Motion practice is not a series of trial balloons where you [submit] what you think is sufficient, [you] see how it flies, and if it does not, you go back and try again"); *Zimmerman v. Bd. of Trustees of Ball State Univ.*, 940 F.Supp.2d 875, 884 (S.D. Ind. 2013) ("[T]he Court is mindful of the principle ... that once a party chooses to take a certain position, it 'cannot change horses in midstream.' ").

The government's declared intent to await sentencing before dismissing Count 3 of the indictment, holds Mr. Snyder and the Court hostage to the government's determination that a satisfactory sentence – one based on bribery – is imposed, suggesting as it seems to that it could and would reserve for itself the prerogative to retry the case if it is not sufficiently pleased with the outcome.

This is not justice and should not be permitted. Mr. Snyder and his family have suffered through nine long and expensive years of ignominy and vilification in the press, a seriously-reduced standard of living due to Mr. Snyder's inability to full time employment befitting his skills and education, and the resulting increased challenges of providing for the college educations and other provisions that ensure the positive futures of their children who have spent almost the entirety of their childhoods with their father in a constant and public fight for his freedom and reputation.

IV. Absent pending motions or awaiting a decision by the Court, Mr. Snyder objects to exclusion of time for 90 days under the Speedy Trial Act.

Mr. Snyder does not object to the exclusion of time under the Speedy Trial Act, if litigation is on-going, motions awaiting resolution or additional time for objections is required according to a briefing schedule set by the Court.

Mr. Snyder does however object to the exclusion of time "on all pending counts through September 15, 2025, as previously ordered by the Court (R. 619), or until the sentencing date set by the Court, whichever is later," as requested by the government. Status Report at 4. Snyder does not believe there is any provision for

himself or the Court to grant exclusion of time for the government to wait and see if the Court sentences under the Act.

WHEREFORE, JAMES SNYDER, through counsel, respectfully requests that this Honorable Court dismiss Count 3 with prejudice, prior to sentencing, and that the Court bar the government from re-trying Count 3 at sentencing at the lesser preponderance of the evidence standard of proof.

Mr. Snyder also requests a ruling on his *Brady* motion and request to produce the grand jury record.[3]

In the alternative, Mr. Snyder asks for a post-*Brady* production briefing schedule for a Motion to Dismiss, incorporating the relevant information from the grand jury record and the recently unsealed transcripts of Attorney Kirsch's testimony prior to the first trial.

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DATE: May 23, 2025

Respectfully submitted,

By: s/Andréa E. Gambino
An Attorney for James E. Snyder

Law Offices of Andréa E. Gambino
53 W. Jackson Blvd., Suite 1332
Chicago, Illinois 60604
(312) 322-0014

[3] If the Court does not grant a Motion to Dismiss, Mr. Snyder will require production of the *Brady* material he requests to vigorously defend against the government's misplaced allegations at sentencing.

andrea@gambinodefense.com

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Julia Schwartz, Esq.
Richard Rothblatt, Esq.
Assistant United States Attorneys

and I hereby certify that I have mailed by United State Postal Service, or hand-delivered the document to the following non-CM/ECF participants: N/A.

DATE: May 23, 2025

Respectfully submitted,

By: s/Andréa E. Gambino
An. Attorney for James E. Snyder

Law Offices of Andréa E. Gambino
53 W. Jackson Blvd., Suite 1332
Chicago, Illinois 60604
(312) 322-0014
andrea@gambinodefense.com