

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

November 20, 2024

Before

DAVID F. HAMILTON, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 21-2986

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

Appeal from the United States District
Court for the Northern District of
Indiana, Hammond Division.

v.

No. 2:16-cr-00160-MFK-2

JAMES E. SNYDER,
Defendant-Appellant.

Matthew F. Kennelly,
*Judge.**

**ON REMAND FROM THE SUPREME COURT
OF THE UNITED STATES**

In our earlier decision in this case, we affirmed the convictions and sentence of defendant Snyder. *United States v. Snyder*, 71 F.4th 555 (7th Cir. 2023). The Supreme Court granted certiorari and reversed Snyder's conviction under 18 U.S.C. § 666 and remanded the case to us for further proceedings consistent with the Court's opinion. *Snyder v. United States*, 603 U.S. —, 144 S. Ct. 1947 (2024). Pursuant to Circuit Rule 54, the government and defendant filed position statements. We invited the parties to file supplemental briefs to respond to the other side's views, and both have done so. The principal point of dispute is whether the Supreme Court left open the possibility of a

* Of the Northern District of Illinois, sitting by designation.

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new trial on the charge under § 666 with jury instructions that would limit the prosecution to a bribery theory, as distinct from a gratuity theory.

Upon consideration of the Supreme Court's opinion and the parties' submissions, we conclude that the government may pursue a new trial under § 666 under a bribery-only theory. Defendant Snyder asked the Supreme Court to decide whether § 666 is limited to bribery or extends to corrupt gratuities. That question had divided the circuits, and Snyder had raised the issue at several stages of the case: by seeking to dismiss the indictment, by objecting to the court's jury instructions, and by seeking a judgment of acquittal. The Supreme Court agreed with Snyder that § 666 is limited to bribery and does not extend to gratuities.

The indictment charged a violation of § 666 without distinguishing between bribery and gratuity theories. The statute says in relevant part that it applies to a public official who "corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, *intending to be influenced or rewarded* in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of \$5,000 or more...." 18 U.S.C. § 666(a)(1)(B). The indictment tracked the statutory language except that it alleged that Snyder intended "to be influenced *and* rewarded" in connection with the relevant contracts. (Emphasis added.) We 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 operative indictment, as edited for trial, charged as follows:

COUNT 3

(Corrupt Solicitation of a Thing of Value)

From in or about January 1, 2012 and on or about January 10, 2014,
in the Northern District of Indiana, the defendant,

JAMES E. SNYDER

Mayor and agent of the City of Portage, Indiana, did corruptly solicit, demand, accept, and agree to accept a bank check in the amount of \$13,000, **intending to be influenced and rewarded in connection with a transaction and series of transactions** of the City of Portage, Indiana, involving \$5,000 or more, that is: contracts approved by the Portage Board of Works totaling over \$1.125M. During the one-year period ending January 10, 2014, the City

of Portage, Indiana, received benefits in excess of \$10,000 under a Federal Program involving a grant, contract, subsidy, loan, or other form of Federal assistance.

All in violation of Title 18 United States Code, Section 666(a)(1)(B).

Dkt. 244-1 filed 02/08/19 at page 3 of 16 (emphasis added). That indictment language tracks the statute, except that the statute says intending to be “influenced *or* rewarded.” We do not read the indictment as having committed the government to a gratuity-only theory. At trial, the government argued both bribery and gratuity to the jury.

The Supreme Court’s opinion did not address jury instructions directly, but its opinion is best understood as having found the jury instructions were erroneous because they permitted the jury to convict on a gratuity theory. The jury instructions in this case allowed conviction on a theory of either bribery or gratuity. The government argued that the evidence showed bribery, but it also argued that even if the jury believed Buha’s testimony, the evidence would still show an illegal gratuity. In a new trial, the government will be limited to a bribery theory, meaning more precisely, in terms of § 666(a)(1)(B), a theory that Snyder corruptly solicited or demanded or accepted or agreed, in advance of the transactions, to accept anything of value in connection with the transactions.

In our panel opinion, after following circuit precedent saying that § 666(a)(1)(B) applied to both bribes and gratuities, we turned to the sufficiency of the evidence. We summarized:

Given irregularities in the bidding process, Snyder’s contemporaneous contacts with the Buhas (unique among bidders), the timing of the \$13,000 payment, the dubious explanations offered for the payment, and the lack of corroborating evidence for Snyder’s claim that he was paid for consulting, a reasonable jury could conclude that Snyder accepted the check as a bribe or gratuity for steering the contracts to GLPB.

71 F.4th at 581. We continue to think the evidence would support a finding of bribery here, beyond a reasonable doubt. The timing and size of the payment — and the problems with the attempts by Snyder and the Buhas to explain it — all support reasonable inferences that Snyder was conscious of wrongdoing and had a corrupt state of mind, as well as that he had reached an understanding ahead of time leading to such a large payment.

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Because the evidence was sufficient to convict on a bribery theory, the Double Jeopardy Clause does not bar a new trial on the bribery charge. A new trial is permissible if the government chooses to pursue it. E.g., *United States v. Blagojevich*, 794 F.3d 729, 738 (7th Cir. 2015) (reversing some convictions that may have been based on improper theory but allowing new trial on remand). The government correctly acknowledges that the instructional error was not harmless. Notwithstanding Circuit Rule 36, any new trial on remand may be conducted by Judge Kennelly, sitting by designation, if he is willing to continue to serve on this case.

So ordered.