

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,)
)
)
Plaintiff-Appellee,)
)
) Appeal from the United States
No. 21-2986) District Court for the
) Northern District of Indiana
)
)
JAMES E. SNYDER,) No. 16 CR 160
)
) Matthew F. Kennelly, Judge.
Defendant-Appellant.)

GOVERNMENT'S CIRCUIT RULE 54 STATEMENT

The UNITED STATES OF AMERICA respectfully submits this statement pursuant to Rule 54 of the Circuit Rules of the Seventh Circuit. The government respectfully represents as follows:

BACKGROUND

Proceedings in the District Court

1. On November 17, 2016, a grand jury returned an indictment charging James Snyder with two counts of federal funds bribery in violation of 18 U.S.C. § 666(a)(1)(B) (Counts 1 and 3), and one count of corruptly obstructing the Internal Revenue Service's administration of the federal revenue laws, in violation of 26 U.S.C. § 7212(a) (Count 4). R. 1. A co-defendant was separately named in Count 2 of the indictment. *Id.*

2. On February 14, 2020, a jury convicted defendant on Count 3 (federal funds bribery) and Count 4 (obstructing the IRS) and acquitted him on Count 1 (federal funds

bribery). R. 256. Subsequently, on November 27, 2019, the district court granted defendant's motion for a new trial on Count 3, the federal funds bribery count that resulted in conviction. R. 322.

3. The defendant was retried on Count 3 of the indictment, R. 482, and on March 19, 2021, the second jury again found defendant guilty. R. 508. The evidence the government introduced at the second trial was substantially the same as the evidence the government introduced at the first trial. Specifically, the government's evidence established that the principals of Great Lakes Peterbilt ("GLPB"), a truck dealer located in Portage, Indiana, had paid defendant—the mayor of Portage—\$13,000 in return for the award of two contracts totaling \$1.125 million to sell garbage trucks to the City of Portage. Before the contracts were awarded, the defendant was involved in the bidding process, which was irregular in several respects. For example, the mayor appointed his associate, Randy Reeder, to oversee the bidding process despite his lack of any real experience in administering contract awards of this nature. The specifications that were devised for the bidding process were tailored to favor GLPB. Moreover, the defendant had contact during the bidding process with the owners of GLPB, Robert and Stephen Buha, and no other bidders. Weeks after GLPB was awarded the second of two lucrative contracts, it provided the mayor with a \$13,000 check made out to a defunct company, "SLC Consulting." The mayor diverted these funds to his personal account. When approached by law enforcement, the mayor contended that the payment from GLPB was for consulting work. The evidence at trial established that no such work had been performed. R. 519 at 2-20.

4. On October 13, 2021, the district court sentenced the defendant to concurrent terms of 21 months' imprisonment on each of the two counts of conviction, namely, Count 3, federal funds bribery—based on the conviction returned by the jury at the second trial, and Count 4, obstructing the IRS—based on the conviction returned by the jury at the defendant's first trial. R. 567, 568.

Prior Proceedings in this Court

5. The defendant appealed to this Court, challenging his convictions on both counts of conviction. This Court affirmed the district court's judgment as to both counts. *United States v. Snyder*, 71 F.4th 555 (7th Cir. 2023).

6. This Court rejected the defendant's challenge to the district court's decision (made before his first trial), denying his motion to dismiss the indictment on the ground that the government had purportedly infringed upon his attorney-client privilege. *Id.* at 563-69. In addition, this Court rejected the defendant's various challenges to his obstruction conviction, including his claims that prosecution was barred by the applicable statute of limitations, and that the evidence was insufficient to support the jury's verdict on the obstruction count. *Id.* at 569-73.

7. Pertinent here, the Court also denied the defendant's challenges to his bribery conviction. *Id.* at 573-82. As an initial matter, this Court denied the defendant's claims that his right to a speedy trial was violated as it related to his second trial on the bribery charge. *Id.* at 575-78. In addition, reaffirming its long-standing precedent, this Court held that § 666 prohibited both bribes and gratuities. *Id.* at 578-80.

8. Finally, this Court denied the defendant's challenge to the sufficiency of the evidence presented in support of the bribery charge at his first and second trial, and concluded that as to both trials, there was "ample support" for the jury's verdict, and that, in light of the evidence, "a reasonable jury could conclude that Snyder accepted the check as a bribe or gratuity for steering the contracts to GLPB." *Id.* at 580-82. Among other things, this Court pointed to the following evidence as supporting the jury's verdict: Snyder put his close friend, Randy Reeder, in charge of the bidding process even though he had no experience in administering public bids; Reeder then tailored the bidding process to favor GLPB; Snyder was paid \$13,000 less than three weeks after a second contract was awarded GLPB; Snyder claimed that he had performed consulting in return for the payment, but could not identify any work product he provided GLPB and there was no such documentation or correspondence in the possession of either Snyder or GLPB. *Id.* This Court concluded that the irregularities in the bidding process, Snyder's contacts with the Buhas (and no other bidders), the timing of the \$13,000 payment, the "dubious explanations" offered for the payment, and the lack of evidence of work actually performed permitted a reasonable jury to conclude that the defendant accepted the check as a bribe or gratuity for steering the contracts to GLPB. *Id.* at 581.

Proceedings in the Supreme Court

9. On August 1, 2023, the defendant filed a petition for writ of *certiorari* with the United States Supreme Court. The sole question presented in the defendant's petition was whether § 666(a)(1)(B) prohibited the solicitation of gratuities.

10. On December 13, 2023, the Supreme Court granted *certiorari* to address a split in the lower courts concerning the scope of the statute.

11. On June 26, 2024, the Supreme Court concluded that, although § 666 as originally enacted in 1984 covered gratuities paid to State and local public officials and subjected them to a ten-year maximum penalty for soliciting such payments, a 1986 amendment designed to prevent the application of the statute to "acceptable commercial and business practices" completely removed such corrupt graft payments from the scope of the statute. *Snyder v. United States*, 144 S. Ct. 1947, 1953-54 (2024) (citations omitted). The Supreme Court reversed and remanded for further proceedings consistent with its opinion. The Supreme Court did not reach the question of whether any instructional error in the case was harmless.

Subsequent Proceedings in this Court

12. On July 29, 2024, after this case was remanded from the Supreme Court, this Court issued a Circuit Rule 54 notice, calling for parties to file statements pursuant to Circuit Rule 54 by August 19, 2024.

ARGUMENT

This Court Should Vacate the Judgment of the District Court and Remand for a New Trial on the Bribery Count.

13. The government respectfully requests that this Court enter an order vacating the judgment of the district court on Count 3, and remand for a new trial on that count, as well as for further sentencing proceedings after the conclusion of the retrial. To be sure, although instructional error generally is subject to harmless error review, *Neder v. United States*, 527 U.S. 1, 4 (1999), the government believes under the particular circumstances of this case, remand for a new trial on the bribery count is appropriate.

14. However, entry of a judgment of acquittal on Count 3 would not be appropriate. As this Court previously found, the evidence the government presented at trial was sufficient to convict the defendant of accepting both a bribe and a gratuity, 71 F.4th at 580-82, and that holding was undisturbed by the Supreme Court's decision.¹ Accordingly, there is no basis to acquit the defendant; at most, the instructional error here entitles Snyder to a new trial. *Montana v. Hall*, 481 U.S. 400, 402 (1987) ("the successful appeal of a judgment of conviction on any ground other than the insufficiency of the evidence to support the verdict, poses no bar to further prosecution on the same charge") (quoting *United States v. Scott*, 437 U.S. 82, 90-91 (1978)). *Accord United States v. Lanzotti*, 90 F.3d 1217, 1220-24 (7th Cir. 1996).

¹ The district court likewise agreed in denying the defendant's motion for judgment of acquittal that there was "ample evidence" from which the jury could conclude the defendant was bribed. R. 534 at 10-11.

15. With respect to the defendant's conviction for obstructing the IRS (Count 4), the Supreme Court did not grant review of that conviction, nor did it mention the conviction in its opinion. This conviction remains undisturbed; the defendant will, of course, need to be resentenced after the conclusion of his retrial on the bribery count.

CONCLUSION

16. For the foregoing reasons, the government respectfully requests that the Court enter an order vacating the judgment of the district court and remanding for a new trial on the bribery count, as well as for further proceedings, including sentencing, after the conclusion of the retrial.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2024, I electronically filed the foregoing GOVERNMENT'S CIRCUIT RULE 54 STATEMENT with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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