

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

United States :
 :
v. : No. 3:01cr263(JBA)
 :
Joseph P. Ganim :

Ruling on Renewed Motion for Judgment of Acquittal [Doc. #0-0]

On March 19, 2003, a jury returned guilty verdicts against defendant Ganim, the former mayor of Bridgeport, Connecticut ("Bridgeport"), on counts one, two, three, four, five, six, seven, eight, thirteen, fourteen, sixteen, seventeen, nineteen, twenty, twenty-two, and twenty-three of a Superceding Indictment [Doc. #52] filed March 27, 2002. Following the close of the Government's case-in-chief, Ganim moved under Fed. R. Crim. P. 29(a) "generally for dismissal of all counts of the [Superceding Indictment]," Def.'s Mem. in Supp. [Doc. #205] at 1, challenging the sufficiency of the evidence to sustain any subsequent conviction by the jury. The Court granted Ganim's motion as to counts eighteen and twenty-one (and racketeering acts 8e, 10b, 11a, and 11b of count one), which charged mail fraud in violation of 18 U.S.C. §§ 1341, 1346 and 2, in the absence of evidence of use of the mails, but reserved with respect to the remainder of Ganim's

motion.¹ Ganim now "renews his general motion for a dismissal of the counts of conviction, as well as his objections to the Court's charge as reflected in the record," id. at 2, and offers specific argument with respect to count seven (for federal program bribery in violation of 18 U.S.C. § 666(a)(1)(B)), asserting that the Government's evidence was insufficient to establish the jurisdictional amount of more than \$10,000 required under the statute. For the reasons set forth below, defendant's renewed motion for judgment of acquittal [Doc. #0-0] is DENIED.

I. Standard for Fed. R. Crim. P. 29

"A defendant challenging the sufficiency of the evidence supporting a conviction faces a heavy burden." U.S. v. Glenn, 312 F.3d 58, 63 (2d Cir. 2002)(quotation omitted). The evidence must be viewed in the light most favorable to the Government and all reasonable inferences drawn in its favor, see U.S. v. Reyes, 302 F.3d 48, 52-53 (2d Cir. 2002), and a conviction should not be overturned unless "no rational trier of fact could have concluded that the Government met its burden of proof," Glenn, 312 F.3d at 63 (quotation omitted).

¹ The motion became moot on counts nine, ten, eleven, twelve, and fifteen after the jury failed to reach a verdict on those counts and the Court correspondingly declared a mistrial as to them.

Where, as here, the Court reserves on a defendant's motion for acquittal made following the close of the Government's case-in-chief, the renewed motion must be decided "on the basis of the evidence at the time the ruling was reserved," Fed. R. Crim. P. 29(b); see U.S. v. Velasquez, 271 F.3d 364, 371-72 (2d Cir. 2001), without reference to the defendant's evidence, if any.

With respect to counts one, two, three, four, five, six, eight, thirteen, fourteen, sixteen, seventeen, nineteen, twenty, twenty-two and twenty-three of the Superseding Indictment, the defendant offers no specific argument pinpointing specific deficiencies in the Government's proof. In the absence of any particularized claim of deficiency in the Government's evidence, Ganim's motion is denied as to these counts.²

II. Background for Count Seven

Count seven of the Superseding Indictment charged Ganim with violating 18 U.S.C. § 666(a)(1)(B),³ alleging he accepted

² In addition, Ganim proffers no new arguments to support his objections to the Court's jury charge beyond those presented and rejected at the charging conferences during trial.

³ Theft or bribery concerning programs receiving Federal funds

(a) Whoever, if the circumstance described in subsection (b) of this

or agreed to accept approximately \$156,000 in 1999 with the intent to be influenced in connection with the eighteen-year extension of Bridgeport's contract with Professional Services Group ("PSG") to operate and manage the city's waste water treatment facilities, which are administered by Bridgeport's Water Pollution Control Authority ("WPCA"), on whose board of directors Ganim served as an ex-officio member. With respect to the more than \$10,000 jurisdictional amount required under § 666(b), the Government's evidence established the following:

For fiscal years ending June 30th 1998 and 1999, the WPCA, the entity in charge of the sewage treatment facilities and drainage systems in the city of Bridgeport, received \$1,122,000 and \$37,737 in federal funds, respectively. The

section exists--

(1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof--

....

(B) 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 anything of value of \$5,000 or more....

....

shall be fined under this title, imprisoned not more than ten years, or both.

(b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of \$10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance....

WPCA maintained two separate funds: an operating fund and a capital fund. All federal monies were deposited into the capital fund, and some were used for the WPCA's projects for operation and maintenance of Bridgeport's sewage treatment facilities and drainage systems. The operating fund consisted solely of monies received by the WPCA as customers' sewer use charges. All monies used to pay for PSG's services under its contract extension, including initial payment for services as well as ongoing operations, came from the WPCA's operating fund.

Ganim argues that the Court should set aside his conviction under 18 U.S.C. § 666(a)(1)(B) and enter an acquittal because the WPCA's federal funds were maintained and used separately and apart from the funds used to pay for PSG's operation and management of Bridgeport's waste water treatment facilities. The Court disagrees.

III. 18 U.S.C. § 666 and Controlling Precedent

"Section 666(a)(1)(B), (b), ... punishes receipt of corrupt payments by any person who corruptly [accepts] money intending to be influenced or rewarded in connection with any ... transaction of an organization, government, or agency involving anything of value of \$5,000 or more if the

organization, government, or agency receives, in any one year period, benefits in excess of \$10,000 under a Federal program." U.S. v. Santopietro, 166 F.3d 88, 90 (2d Cir. 1999)(quotations omitted).

In U.S. v. Coyne, 4 F.3d 100 (2d Cir. 1993), the Second Circuit affirmed a conviction under § 666(a)(1)(B)⁴ where, inter alia, a county executive used his influence to steer a lucrative county contract for architectural services related to the construction of a civic center to a long-time friend in exchange for \$30,000. In the relevant year, the county had received millions of dollars in federal financial assistance but none of the assistance was earmarked for the civic center project. Coyne argued that his conviction under § 666(a)(1)(B) had to be overturned because the federal funds were not earmarked for and thus did not support the project to which the bribe related. See id. at 108. In rejecting Coyne's argument, the Second Circuit stated, "[t]he language [of § 666] neither explicitly nor implicitly requires that the \$10,000 be directly linked to the program that was the subject of the bribe." Id. at 109.

In subsequently construing and reaffirming the holding in

⁴ Amendments made to the version of 18 U.S.C. § 666 interpreted by the Second Circuit's decision in Coyne are not material to the interpretation of the \$10,000 jurisdictional requirement.

Coyne, the Second Circuit summarized, "this Court has held that in order to establish the more-than-\$10,000 jurisdictional amount set out in § 666(b), the government need not trace the federal funds received by an organization to the project in connection with which its employee received a bribe." U.S. v. Foley, 73 F.3d 484, 490 (2d Cir. 1996); see also id. at 492 ("In sum, we have held that in order to establish an offense under § 666(a)(1)(B), the government is not required to trace the agent's corrupt expenditures to the federal program funds"). However, consistent with Coyne, Foley annunciated a general nexus requirement, holding that § 666(a)(1)(B) "was not designed for the prosecution of corruption that was not shown in some way to touch upon federal funds." Id. at 493.

Salinas v. U.S., 522 U.S. 52 (1997), concerned a county deputy sheriff's receipt of designer watches and a pick up truck from a federal prisoner in exchange for facilitating conjugal visits for the prisoner. See id. at 54-55. The county housed the federal prisoners pursuant to an agreement with the United States Marshals Service and in exchange received substantial federal funding for improving the county jail and a specific per diem amount for each federal prisoner housed in the county jail. See id. at 54. The federal

payments to the county were well in excess of \$10,000 during the two relevant periods in the case. See id. In upholding the deputy sheriff's conviction under § 666(a)(1)(B), the Supreme Court rejected the argument that the bribe in some way had to affect federal funds, for example, by their diversion or misappropriation, see id. at 55-59, but declined to decide "whether the statute requires some other kind of connection between a bribe and the expenditure of federal funds," id. at 59, because the bribe at issue was "related to the housing of a prisoner in facilities paid for in significant part by federal funds themselves," and "that relationship [was] close enough to satisfy whatever connection the statute might require." Id. In clarifying the possible requirement of a connection, the Supreme Court elaborated, "Beltran was without question a prisoner held in a jail managed pursuant to a series of agreements with the Federal Government. The preferential treatment accorded to him was a threat to the integrity and proper operation of the federal program." Id. at 60-61.

While the Second Circuit recognized in Santopietro that Salinas "[had] somewhat eroded Foley," Santopietro, 166 F.3d at 92, it held that nothing in Salinas disturbed the requirement of Foley that § 666(a)(1)(B) "requires at least

some connection between the bribe and a risk to the integrity of the federal funded program." Id. at 93. "[T]hus, even after Salinas, Foley would not permit the Government to use section § 666(a)(1)(B) to prosecute a bribe paid to a city's meat inspector in connection with a substantial transaction just because the city's parks department had received a federal grant of \$10,000." Id. In finding the requisite nexus of Foley satisfied, the Santopietro court explained:

In the pending case, corrupt payments were made by real estate developers to secure the use of the appellants' influence with city agencies including the City Plan Commission, the Zoning Commission, the Water Department, and the Fire Marshal, and the use of their influence to further the interests of the developers in the appointments of members and chairpersons of land use boards and relevant committees and agencies in the City of Waterbury. During the relevant periods, substantial federal funds were received by Waterbury for housing, urban development, and other programs within the purview of these agencies and officials. Since federal funds were received by Waterbury for housing and urban development programs and the corrupt payments concerned real estate transactions within the purview of the agencies administering federal funds, the requisite connection between the bribes and the integrity of federally funded programs is satisfied. Thus, this is not a case where the transactions sought to be influenced concerned one department of a city and the requisite \$10,000 of federal funds were received by a totally unrelated department.

Santopietro, 166 F.3d at 93-94 (citations and quotations omitted).

IV. Application

The WPCA received substantial amounts of federal funding, including \$1,122,000 in 1998, which it deposited into its capital fund and which was used, at least in part, to carry out the WPCA's general mandate to operate and maintain Bridgeport's waste water treatment facilities. While the funds paid to PSG under its contract extension came only from the WPCA's non-federal operating fund, PSG's operation and management of the city's waste water treatment facilities was related to (and in fact took over a portion of) the general functions of the WPCA and to the same facilities for which the WPCA had received and used federal funds. Under Santopietro, the connection requirement of § 666(a)(1)(B) is satisfied where the federal funding relates to the subject matter of the bribe, and such relationship exists where, as here, the federally funded program and the corrupt transaction concern the same general subject matter and fall within the jurisdiction of a single agency. See Santopietro, 166 F.3d at 93-94 (connection established where bribe concerned real estate transactions under the purview of the same agency which administered federally funded housing and urban development programs); see also Salinas, 522 U.S. at 59, 61 (any connection requirement of § 666(a)(1)(B) satisfied because bribe for facilitation of illicit conjugal visits of federal

prisoner related to the prisoner's housing in a federally funded facility). Accordingly, PSG's contractual undertaking of a portion of the WPCA's functions, coupled with the administration of federal funds by the WPCA in programs related to treatment of the city of Bridgeport's waste water, establishes the requisite connection between the PSG contract extension (the subject of the bribe) and the threat to the integrity of federal program funds required under § 666(a)(1)(B), and therefore the evidence introduced during the government's case-in-chief was sufficient to sustain Ganim's conviction under count seven.⁵

The strict separation inside the WPCA of federal monies from the funds used to finance PSG's contract extension does not require setting aside Ganim's conviction because, under Coyne and Foley, § 666(a)(1)(B) does not require earmarking, tracing, or other direct support or linkage between federal funding and the ultimate transaction which is the subject of the bribe. In addition, Santopietro did not narrow those cases by imposing any requirement that federal and other funds

⁵ Language in Santopietro suggests without deciding that Ganim's conviction could also be sustained on the ground that, as chief executive officer of Bridgeport, Ganim's ultimate responsibility for all city departments makes § 666(a)(1)(B) applicable to corrupt payments received by him for any transaction involving the city, even though the federal funds were received for a program unrelated to the program which was the subject of the bribe. See Santopietro, 166 F.3d at 94 n.3.

be co-mingled within the same agency to establish the requisite nexus between bribe and federal funding.⁶

v. Conclusion

For the reasons set forth above, Ganim's renewed motion [#0-0] is DENIED.

IT IS SO ORDERED.

/s/

Janet Bond Arterton,

U.S.D.J.

Dated at New Haven, Connecticut, this 30th of June, 2003.

⁶ The Court recognizes that, notwithstanding Foley's acceptance of Coyne and Santopietro's mere application of Foley's nexus requirement, the Santopietro and Coyne decisions may be in some tension, the latter suggesting that receipt of federal funds by a county necessarily satisfies the connection requirement between a bribe and county-administered programs without inquiry into whether such funds were received for a program unrelated to the subject matter of the bribe. The Court need not decide whether such tension exists, or whether the two decisions are otherwise reconcilable (e.g., on the grounds that Coyne was a county executive, see supra note 5), because here all sources of the WPCA's funding (federal and otherwise) were held for purposes related to the agency's general mandate to operate and maintain sewer and drainage systems throughout Bridgeport, the very subject matter of PSG's contract extension.