

In the
Supreme Court of the United States

JOHN BUNCICH,

Petitioner,

—v—

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Where there is a finding of *Chapman* error, does the appellate court err by relying on its own assessment of the credibility of the defendant's testimony and evidence to find harmless error.

LIST OF PROCEEDINGS BELOW

The United States Court of Appeals
for the Seventh Circuit
USCA No. 18-1216
United States v. John Buncich
June 5, 2019 (Judgment Affirmed)
July 3, 2019 (Petition for rehearing and rehearing *en
banc* denied)

United States District Court for the
Northern District of Indiana, Hammond Division
Case No. 2:16 CR 161
United States v. John Buncich
January 18, 2018 (Judgment Entered)

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PETITION FOR WRIT OF CERTIORARI

John Buncich, a federal inmate currently incarcerated at United States Penitentiary MCFP Springfield, by and through his Attorneys J. Michael Katz and Kerry C. Connor, respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.



OPINIONS BELOW

The June 5, 2019, opinion of the United States Court of Appeals for the Seventh Circuit is reported at 926 F.3d 361 (7th Cir. 2019). (App.1a). The United States District Court for the District of the Northern District of Indiana, Hammond Division entered judgment of conviction on January 18, 2018. (App.14a).



JURISDICTION

The Seventh Circuit entered its order denying a timely filed petition for panel rehearing and rehearing *en banc* on July 3, 2019. (App.31a). This Petition for Writ of Certiorari was filed properly on the date listed herein, and the Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Federal Rules of Evidence, Rule 404:

(a) Character Evidence.

(1) Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) Exceptions for a Defendant or Victim in a Criminal Case. The following exceptions apply in a criminal case:

(A) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;

- (B) subject to the limitations in Rule 412, a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may:
 - (i) offer evidence to rebut it; and
 - (ii) offer evidence of the defendant's same trait; and
- (C) in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(3) Exceptions for a Witness. Evidence of a witness's character may be admitted under Rules 607, 608, and 609.

(b) Crimes, Wrongs, or Other Acts.

- (1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
- (2) Permitted Uses; Notice in a Criminal Case. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On request by a defendant in a criminal case, the prosecutor must:
 - (A) provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and

(B) do so before trial—or during trial if the court, for good cause, excuses lack of pretrial notice.



STATEMENT OF THE CASE

This case presents the pressing question of whether *Chapman* harmless error analysis permits the reviewing court to assess the credibility of the defendant's testimony and evidence.

A. Statement of Facts.

John Buncich was elected Sheriff of Lake County, Indiana in November of 2010, and took office January 1, 2011. He also served two terms as Sheriff from 1995 to 2002. The county sheriff is responsible for towing related to county police work. Buncich created his list of tow operators before taking office; twelve tow operators each had a defined territorial zone. Some were assigned to specialized police units, such as gang unit, stolen auto detail or narcotics unit, sometimes they rotated; four heavy towers served Lake County.

Scott Jurgensen, of Samson Relocation and Recovery, LLC joined the Sheriff's tow list before his term began. Tim Downs, Chief of Police, and Buncich's friend of thirty years, recommended Jurgensen to the Sheriff. Jurgensen became a confidential informant for the FBI to investigate bribery in Merrillville towing. In early 2014, Jurgensen formed a towing relationship with Willie Szarmach. He began investigating Szarmach and Lake County towing. Szarmach was also on the Sheriff's tow list.

Buncich held a yearly Summer Fest campaign fundraiser each year. Chief Tim Downs sold tickets once a year for the summer fundraiser, mostly to towers. Buncich became chairman of the Lake County Democratic Central Committee in the spring of 2014. They also held fundraisers.

1. Counts 1, 2, 3. Wire Fraud, Honest Services Fraud.

Counts 1 through 3 alleged wire fraud based on three (3) purported “Federal Reserve payroll funds transfer[s]” dated May 5, 2014, November 17, 2014, and August 10, 2015. The Superseding Indictment did not indicate what the nature of the alleged payroll funds transfers might be, except to suggest “John Buncich, Timothy Downs, and William Szarmach,” had “transmitted and caused [the payroll funds transfers] to be transmitted by means of wire communications in interstate commerce.” (App.39a). The only evidence submitted regarding payroll records were for John Buncich’s salary as the Lake County Sheriff. The Buncich payroll records include payroll summaries for bi-weekly paychecks issued between July 1, 2015 through November 15, 2016.

During deliberations, the jury sent a note to the trial court indicating it could not “find evidence relating” to Counts 1 through 3 of the Superseding Indictment. And, after being told they had received all the evidence in the case and should continue to deliberate, 14 minutes later the jury followed up with a second question, asking the meaning of the term “Federal Reserve payroll fund transfer.”

2. Count 4: April 8, 2014: \$2000 Check Plus \$500 Cash. Wire Fraud, Honest Services Fraud.

On April 8, 2014, Downs took a personal day to campaign for the upcoming primary election on May 6, 2014. He met Jurgensen, an informant, at Round the Clock Restaurant in Merrillville, Indiana. The previous year, Jurgensen purchased fundraiser tickets for the Sheriff's Summer Fest. Jurgensen, gave Downs a business check marked "donation" and written to "Buncich Boosters" in the amount of \$2000, in exchange for 20 tickets.

Jurgensen testified on direct and cross-examinations that he did not give an additional \$500 cash donation as alleged in the Superseding Indictment. Rather he gave \$500 to Downs in October, 2014 with the check to the Lake County Democratic Central Committee. Buncich agreed he received the \$2000 check from Samson Towing for fundraiser tickets but denied receiving cash in the amount of \$500. Buncich testified he did not adjust towing based upon ticket purchases for any tow company.

3. Count 5: October 21, 2014: \$4000 in checks and \$1000 cash. Wire Fraud, Honest Services Fraud.

On October 9, 2014, Downs met with Szarmach and Jurgensen at the Paragon Restaurant in Hobart for lunch. Downs was on his personal time, selling Lake County Democratic Central Committee fundraiser tickets, since Buncich became Committee Chairman in 2014. Jurgensen and Szarmach tossed around figures for how much each should contribute for the two sets of tickets. Several times Downs told them they had

already contributed and did not need to make a further contribution. Szarmach said multiple times he knew that, but they wanted to contribute.

Jurgensen and Szarmach each bought 20 Democratic committee fundraiser tickets at \$100 each. They purchased 10 tickets at \$50 each for a different fundraiser. The tickets for both events were given to Szarmach and Jurgensen on October 9, 2014. Downs protested the purchase wasn't necessary. Downs planned to pick up the money a few days before the event.

On October 21, 2014, Downs met with Jurgensen, an informant, and Szarmach to collect the money for their tickets. Jurgensen testified he wrote a check for \$2000 to the Lake County Democratic Central Committee, accompanied by \$500 cash for the other tickets. Szarmach also gave a \$2000 check to purchase committee fundraiser tickets. Buncich denied receiving \$500 cash from either Szarmach or Jurgensen.

4. Count 6: Charged Bribes.

a. July 15, 1015: \$7500 Cash.

i. June 3, 2015.

Jurgensen, Downs, Szarmach and Dan Murchek, Deputy Chief of Police, met at the Paragon Restaurant in Hobart to collect money for Summer Fest tickets. Szarmach agreed to purchase 25 tickets, with the money to be collected later. Jurgensen also took 25 tickets and paid that day, with cash in a Chase Bank envelope marked "County." Based upon the conversations that day at the Paragon, Downs was stopped by

the FBI with the cash and given the option to cooperate.

ii. June 15, 2015.

Downs, now acting as an informant, went to collect ticket money from Szarmach and Jerry Kundich on June 15, 2015. Szarmach did not have his money, but Downs collected \$2500 in an envelope from Mr. Kundich.

iii. June 18, 2015.

Downs, an informant, collected \$2500 for 25 tickets from Szarmach at his place of business. Downs advised he gave Szarmach 26 tickets and asked that one be returned. Szarmach gave \$2500 cash for 25 tickets to the Summerfest fundraiser. He chose to pay cash, having already reached his \$2000 annual company campaign contribution limit. Downs mentioned Szarmach's tow area change.

iv. July 15, 2015.

Downs, while wearing a wire, delivered the \$7500 cash he obtained from Jurgensen, Kundich and Szarmach to Buncich. In exchange, each tower received 25 tickets. Downs delivered the \$7500 in cash to the Sheriff who put it into his desk drawer. Video reveals that Buncich was in a meeting with a deputy warden at the time Downs delivered the cash. Downs said Jurgensen was worried about being taken off the list, to which Buncich replied, "Well, he didn't get taken off. He shouldn't worry." Buncich then went on to inquire if the three towers needed their tickets. Downs said they had them already.

Buncich did not list the \$7500 on the campaign reports as coming from a particular person and testified he realized he made an error. He indicated he used the cash to pay for fundraiser incidentals, such as decorations, dessert, door prizes, cigars, band, tips for bartenders and waitresses and deposited the balance of approximately \$3300 into his Buncich Boosters campaign account. Buncich did not report the specifics of these transactions on his campaign finance report, which he admitted was "sloppy work."

v. April 22, 2016 Meeting.

Szarmach, Buncich, and Jurgensen, an informant, met at the Delta Restaurant in Merrillville on April 22, 2016. Jurgensen and Szarmach had several talks and decided to give \$5000 each to the Buncich. Since Szarmach did not have the money, Jurgensen would loan \$2500 and they would each pay him \$2500 on this date and \$2500 later.

Szarmach and Jurgensen arrived first and parked next to each other with their driver's side adjacent. On arrival, Buncich walked up to them as they were standing between their vehicles. Szarmach had his door open and asked Buncich to "Look at my new truck." Szarmach said he had previously placed two envelopes on the seat, one containing \$2500 cash and one containing \$1000 cash for Buncich and he told the Sheriff there were envelopes on the seat. The Sheriff leaned inside the door and then stood up. Jurgensen said Buncich took cash from the truck, not an envelope. Buncich denies he picked anything up from the seat. Jurgensen gave Buncich a white envelope containing \$2500 cash, which Buncich put into his pocket. Jurgensen said to the Sheriff, "You did every-

thing you said you were going to do. Thank you so much.” To which the Sheriff responded, “You’re welcome.” Buncich testified he gave Jurgensen 100 tickets to the summer fundraiser on the way into the restaurant. None of the video or photographs document Buncich taking anything from the front seat of the truck.

Buncich testified he loaned Szarmach \$1000 several months before this meeting. Szarmach told Jurgensen he owed Buncich \$1000. Buncich testified he had no agreement with Szarmach or any other heavy tower to receive favors in exchange for contributions.

vi. July 21, 2016: \$2500 Cash.

Buncich, Szarmach and Jurgensen met at the Delta Restaurant over fundraiser tickets. Buncich forgot the tickets to the August 3, 2016 fundraiser. Jurgensen gave Buncich \$2500 dollars for the tickets. Szarmach arranged for his son to pick up 25 tickets at the Sheriff’s Department. Szarmach said he would pay for the tickets at the Fest.

vii. August 9, 2016: \$3500 Cash.

Szarmach attended the Sheriff’s Summer Fest at Wicker Park on August 3, 2016. His son previously picked up 35 tickets at the Lake County Government Center as discussed on July 21, 2016. Szarmach testified he paid \$1000 cash and \$2500 in a check, or possibly \$1000 check and \$2500 cash, he was not sure, for the 35 tickets that he had already received.

viii. September 2, 2016: \$7500 Cash.

Buncich and Jurgensen met at the Delta Restaurant for breakfast on September 2, 2016, to discuss a John Gregg fundraiser. In the parking lot, Jurgensen handed Buncich an envelope which Buncich, very publicly, put into his back pocket. Jurgensen told him the envelope contained \$7500. Buncich testified that on April 22, 2016 he gave Jurgensen 100 tickets for the Summer Fest, but Jurgensen had only paid him for 25 of the tickets. According to Buncich, the \$7500 on September 2, 2016 was for payment of the remaining 75 tickets. Jurgensen made the decision to pay in cash.

No deposits were made in the Buncich Boosters account for September 2016. Buncich testified he kept the \$7500 as repayment of campaign loans and deposited \$6000 into his personal account. An additional \$1600 was in Buncich's home in a Chase Bank bag. Agent Hatagan agreed the campaign loans could be repaid with cash if properly accounted for in the annual campaign finance report.

Jurgensen testified the \$7500 paid on September 2, 2016, was as a thank you to Buncich for assisting him in becoming the sole tower in New Chicago. Buncich contacted Sue Pelfrey to ask who was on the towing list. She told Buncich to call Chief Richardson. Chief Jim Richardson testified he received a call of inquiry from Sue Pelfrey in mid-September. He had dismissed Tow Central the last week of August 2016 and it was his sole determination. Further, he never spoke with Buncich. Since New Chicago's town ordinance requires a minimum of two towers on rotation, Wayne Towing of Lake Station was added to the tow list with Samson.

5. Rule 404(b) Evidence

The government sought to enter into evidence a bank account summary of Buncich's personal and campaign accounts, alleging that Jurgensen and Szarmach made cash payments to Buncich in the amount of \$26,000 between April 8, 2014 and September 22, 2016. (App.44a-46a). The government hoped to refute testimony of various towers regarding cash payments to Buncich. The campaign account showed cash deposits of \$11,240, leaving \$14,760 for which could not be accounted. The bank account summary showed \$58,100 was deposited into the Buncich's personal account during the time period involved. Prior to trial, the defense moved to exclude the government's proposed evidence of cash deposits made into the defendant's personal and campaign accounts. And, as to the cash deposits into the personal account, the district court agreed.

Okay. Counsel, I've reviewed the Government's proposed Exhibit No. 49B regarding cash deposits, and I just can't admit it. Some of these deposits on this document are so remote in time, that they can't possibly bear any relevance to the alleged bribes. Many of the amounts vary too wildly from your alleged bribes to be probative. Even if the information on this document was relevant, the danger of unfair prejudice to the Defendant and the danger of misleading the jury and causing them to speculate and concern themselves with matters unrelated to this case, it's just too great for me to

admit it. So if you offer it, it won't be admitted.
(App.29a).

The district court did permit the government to elicit testimony regarding those cash deposits into the personal account that could be shown to reasonably correspond to alleged bribes. (App.10a).

Once the defense rested, the government urged the court to reverse its ruling on the admissibility of the bank account summary exhibit and allow its admittance in rebuttal. The government was clear that it intended to seek admission of the \$58,100 in cash deposits so as to allow the jury to infer the unexplained cash income indicated additional "criminal activity." (App.49a-51a). No evidence was presented that the deposits were in fact from an illegal source. However, the government argued that the defendant had presented evidence that other tow truck drivers were not taking bribes and defendant had few other sources of income. Agent Hatagan would show on rebuttal that Defendant had three sources of income with direct deposits. (App.48a).

On rebuttal, Agent Hatagan was recalled to discuss the deposits into Buncich's personal bank account and speculate as to the legality of the source of the deposits. On redirect, the government was allowed, over objection of defense counsel, to question Hatagan as to his opinion of the source of cash deposits into the personal account of the defendant. (App.52a). Hatagan testified that it was his opinion that the money came from an illegal source because it was not entered on the defendant's federal income tax

returns as income and the evidence previously presented at trial. (App.52a).

B. Procedural History.

1. Proceedings in the trial court.

On April 21, 2017, the Defendant-Appellant John Buncich was charged in six (6) counts of a seven (7) count Superseding Indictment. (App.33a). Counts 1-5 of the Superseding Indictment charged Buncich with wire fraud and honest services fraud in violation of 18 U.S.C. § 1343 and § 1346; the underlying scheme alleged as to the wire fraud counts was bribery. Count 6 of the Superseding Indictment alleged bribery in violation of 18 U.S.C. § 666(a)(1)(B).

On August 24, 2017, after a 16-day jury trial, the jury found Buncich guilty on all counts.

On January 16, 2018, John Buncich was sentenced. The district court determined that Buncich's advisory guidelines range was 151-188 months based upon a total offense level of 34 and a Criminal History Category I. John Buncich was sentenced to 188 months total term of incarceration: 188 months on Counts 1-5, and 120 months on Count 6 all to run concurrent; 2 years of supervised release, a fine of \$250,000, restitution in the amount of \$800, and agreed forfeiture in the amount of \$38,000. (App.14a-16a).

2. Proceedings in the appellate court.

The Seventh Circuit panel in the case a bar unanimously agreed that other-act evidence and testimony was admitted in violation Fed. R. Evid. 404(b) was error. (App.12a). Specifically, the govern-

ment successfully and erroneously sought the introduction of evidence of an account that was jointly held by the defendant with \$58,100 in cash deposits. IRS Agent Hatagan, in presenting the erroneous evidence to the jury, was erroneously permitted to testify that in his expert opinion the deposits evidenced illegal activity by the defendant. The panel concluded the cash deposits and related testimony were “propensity evidence not submitted for any purpose permitted under Rule 404(b).” (App.12a).

The other-act evidence was not the only evidence upon which the Seventh Circuit found error in the case at bar. The government had conceded that no evidence was presented at trial to support three (3) of the five (5) mail fraud counts upon which Buncich was convicted. Specifically, Count 1-3 relied on “Federal Reserve payroll funds transfer[s]” dated May 5, 2014, November 17, 2014, and August 10, 2015. The Seventh Circuit therefore reversed Counts 1-3. (App.8a).

Thus, though the Seventh Circuit reversed Counts 1-3 and found Fed. R. Evid. 404(b) error, the Seventh Circuit affirmed the remaining counts (Counts 4, 5, and 6), finding neither spill over from the error as to Counts 1-3 and harmless error as to the Rule 404(b) erroneous evidence and testimony. (App.13a).

It is the finding of harmless error from which Buncich now seeks review.



REASONS FOR GRANTING THE WRIT

I. THE SEVENTH CIRCUIT ERRED IN CONCLUDING THAT THE GOVERNMENT HAD CARRIED ITS BURDEN OF PROOF THAT THE ADMISSION AND TESTIMONY IN VIOLATION OF RULE 404(b) WAS HARMLESS.

It has long been held that burden rests on the government to show that error is harmless. *United States v. Olano*, 507 U.S. 725, 734 (1993). This Court made clear in *Chapman v. California*, 386 U.S. 18 (1967), that “before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt.” *Arizona v. Fulminante*, 499 U.S. 279, 295-296 (1991), citing *Chapman*, 386 U.S. at 26. And, in the case at bar, it “must be determined that” the lower court error “did not contribute to” Buncich’s conviction. *Id.*

Here, however, this foundational premise is completely absent from the Seventh Circuit decision. Rather, in concluding that the evidence was “extensive” and Buncich’s testimony “not persuasive,” (App.12a) the Seventh Circuit usurped the province of the jury in assessing the defendant’s credibility. In so doing, the Seventh Circuit abandoned the *Chapman* analysis and “become in effect a second jury to determine whether the defendant is guilty” *Neder v. United States*, 527 U.S. 1, 19 (1999).

John Buncich spent more than two days on the stand. He attempted to defend himself vigorously by refuting the statements of the government’s cooperating witnesses. He presented the jury with a different

view of the events related to the wire fraud and bribery counts than that taken by the government.

Moreover, as the Seventh Circuit panel points out, credibility is a determination to be made by a jury. (App.13a). It is improper on the harmless error analysis for the appellate court to usurp that credibility determination and base its decisions on an assessment that John Buncich's testimony was "not persuasive." *Id.* "It is not the appellate court's function to determine guilt or innocence." *Kotteakos v. United States*, 328 U.S. 750, 762 (1946). The appellate court must "ignore a sense of guilt" that may come from the record and determine with surety that the error, in light of the full record "did not influence the jury." *Id.* 328 U.S. at 764.

But if one cannot say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by error, it is impossible to conclude that substantial rights are not affected.

Kotteakos, 328 U.S. at 762 (emphasis added).

When looking at all that happened in this case, a conclusion that the multiple errors were harmless cannot stand. *Kotteakos*, 328 U.S. at 762. Though the panel discusses the introduction of Rule 404(b) evidence as if it is the sole isolated error in the case, the error in this case is several-fold. In addition to the admission of the Rule 404(b) evidence and the testimony of Agent Hatagan, the jury acted unreasonably in convicting John Buncich of three (3) of six (6) counts for which there was insufficient evidence. As to Counts 1-3, even the government agreed, no "rational

trier of fact could have found the essential elements” of the three (3) counts “beyond a reasonable doubt.” *See United States v. Doody*, 600 F.3d 752, 754 (7th Cir. 2010); *see also, United States v. Johnson*, 874 F.3d 990, 998 (7th Cir. 2017), *cert. denied*, 138 S.Ct. 1275, 200 L.Ed.2d 427 (2018). Yet, this jury did convict and did so even after acknowledging the lack of evidence on the three (3) ultimately reversed counts during deliberations: first, by asking the district court where it could “find evidence relating” to Counts 1 through 3; and, second, by questioning the meaning of a “Federal Reserve payroll funds transfer.”

The reversal on Counts 1-3 is far from a close call. There simply was no evidence as alleged in Counts 1-3 of “Federal Reserve payroll funds transfer[s]” dated (1) May 5, 2014, (2) November 17, 2014, and (3) August 10, 2015 in the record. The jury convicted anyway.

But, even had sufficient evidence been found, Counts 1 through 3 could not have survived review as a matter of law. This Court in *Skilling v. United States*, 561 U.S. 358, 410 (2010), specifically rejected the government’s reliance on the defendant’s salary, bonuses, and profits from his own sale of stocks to establish the honest services fraud, 18 U.S.C. § 1346. Likewise, following the dictates of *Skilling*, the Seventh Circuit has held *bona fide* salary paid for employment “through normal personnel practices” cannot form the basis of § 1346 fraud. *United States v. Thompson*, 484 F.3d 877, 884 (7th Cir. 2007). And, “[c]ompensation for a job by someone other than a ghost worker is a ‘bona fide salary.’” *United States v. Blagojevich*, 794 F.3d 729, 737 (2015). Thus, under

both Supreme Court precedent and Seventh Circuit law following that precedent, Counts 1-3 should not even have been brought.

However, focusing on the factual deficiency of Counts 1-3 alone, it is obvious from the completely baseless convictions as to Counts 1-3 that the jury was significantly swayed by the prejudicial effect of the erroneous Rule 404(b) evidence and the testimony of Agent Hatagan. Yet, ignoring the impact on Counts 1-3, the Seventh Circuit was willing to conclude that the same impermissible Rule 404(b) evidence and testimony had no significant influence on Counts 4-6. The conclusion not only defies logic, but clearly conflicts with the dictate that the reviewing court is not to sit as a juror over the credibility of evidence. *Neder*, 527 U.S. at 19.

It defies logic to conclude that the jury was willing to convict John Buncich on Counts 1-3 with no evidence, and yet the impermissible evidence had no significant influence on the jury as to Counts 4-6. In this case, there is no “fair assurance” that the verdict was not substantially swayed by the error” and the Seventh Circuit opinion otherwise must be reversed. *See Kotteakos*, 328 U.S. at 765.



CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

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