

APPENDIX

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 19-30696
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 8, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

BYRON A. WYATT,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 1:16-CR-134-1

Before OWEN, Chief Judge, and SOUTHWICK and WILLETT, Circuit Judges.
PER CURIAM:*

A jury convicted Byron A. Wyatt of two counts of seeking and accepting bribes while being a public official. He was sentenced below the guidelines range to 24 months in prison and a two-year term of supervised release. Wyatt subsequently filed a motion for new trial based on newly discovered evidence, which the district court denied. He now appeals.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Generally, Wyatt argues that the district court abused its discretion in denying his motion for a new trial. Specifically, he contends that the alleged newly discovered PayPal documents he received after trial contradicted the records introduced at trial. He argues that because the PayPal documents probably would have produced an acquittal, this court should reverse, vacate, and remand the case for further proceedings.

We review the denial of a motion for a new trial for an abuse of discretion. *United States v. Piazza*, 647 F.3d 559, 564-65 (5th Cir. 2011). To obtain a new trial based on newly discovered evidence, the defendant must show that (1) the evidence is newly discovered and was unknown to him at the time of trial, (2) the failure to detect the evidence was not due to his lack of diligence, (3) the evidence is not merely cumulative or impeaching, (4) the evidence is material, and (5) the evidence if introduced at a new trial would probably produce an acquittal. *Id.* at 565. The failure to demonstrate any one of these factors is fatal to the motion. *Id.*

The trial testimony and records introduced at trial showed that Wyatt, who was employed by the Bureau of Prisons, would take contraband into the prison in exchange for money either wired to him or given to him on Green Dot cards. The evidence at trial also showed that Wyatt requested refund checks from Green Dot; he cashed the refund checks; and he deposited the refund checks into his bank account. The evidence regarding the refund checks was sufficient to convict Wyatt of seeking and accepting bribes. Thus, the introduction of PayPal documents, which showed the source of money funding his PayPal account, would probably not produce an acquittal. *See id.* at 565. The district court did not abuse its discretion in denying the motion for a new trial. *Id.* at 564-65. The judgment of the district court should therefore be AFFIRMED.

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DATE 5/25/16

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA

V.

BYRON A. WYATT

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CRIMINAL NO.: 16-00134-01

18 U.S.C. § 201(b)(2)(A)

CHIEF JUDGE DRELL

MAGISTRATE PEREZ-MONTES

INDICTMENT

THE GRAND JURY CHARGES:

COUNT ONE

On or about May 6, 2014, in the Western District of Louisiana, Defendant, BYRON A. WYATT, a public official, to wit, Corrections Officer at the United States Penitentiary in Pollock, Louisiana (USP Pollock), directly and indirectly did corruptly demand, seek, receive, accept, and agree to receive and accept something of value personally, to wit, money, in return for being influenced in the performance of any official act.

All in violation of Title 18, United States Code, Section 201(b)(2)(A). [18 U.S.C. § 201(b)(2)(A)].

COUNT TWO

On or about June 10, 2014, in the Western District of Louisiana, Defendant, BYRON A. WYATT, a public official, to wit, Corrections Officer at the United States Penitentiary in Pollock, Louisiana (USP Pollock), directly and indirectly did corruptly demand, seek, receive, accept, and agree to receive and accept something

of value personally, to wit, money, in return for being influenced in the performance of any official act.

All in violation of Title 18, United States Code, Section 201(b)(2)(A). [18 U.S.C. § 201(b)(2)(A)].

A TRUE BILL

REDACTED

GRAND JURY FOREPERSON

STEPHANIE A. FINLEY
United States Attorney

By: 

EARL M. CAMPBELL
Assistant United States Attorney
300 Fannin Street, Suite 3201
Shreveport, Louisiana 71101
318.676.3600

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TONY H. MOORE, CLERK
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA, LOUISIANA

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

ALEXANDRIA DIVISION

UNITED STATES OF AMERICA

CRIMINAL NO. 1:16-cr-00134

-vs-

BYRON A. WYATT

JUDGE DEE D. DRELL
MAG. JUDGE PEREZ-MONTES

VERDICT FORM

As to each answer, "Not Guilty" or "Guilty," please place an "X" in the appropriate blank.

1. As to the charge contained in Count 1 of the indictment, accepting a bribe by a public official, we unanimously find that Byron A. Wyatt is:

NOT GUILTY

X

GUILTY

2. As to the charge contained in Count 2 of the indictment, accepting a bribe by a public official, we unanimously find that Byron A. Wyatt is:

NOT GUILTY

X

GUILTY

The foreperson should sign and date this form and should notify the Court Security Officer that a decision has been reached.

SIGNED on this 5 day of April, 2018, at Alexandria, Louisiana.

[Redacted Signature]

FOREPERSON

1 And so these documents, if they were presented to the
2 jury, you still would have at the end of the day: So what?
3 They're not material, and it would not have likely produced a
4 different outcome.

5 And absent of showing any type of intentional or even
6 some unintentional government altering or manipulation of the
7 document, which did not happen in this case, I don't think
8 that this case raised to the level of unfair justice or
9 anything like that that would warrant the court to upset the
10 judgment of 12 citizens of this community.

11 And the court had a chance to review it, Rule 29, at the
12 close of the government's evidence, and there's nothing that
13 would merit or warrant an upset of the collective and
14 individual judgments of those 12 individuals who sat in that
15 jury box over there.

16 THE COURT: All right. Thank you.

17 We're going to take a brief recess. I want to look at
18 something in the back.

19 (Recess taken from 11:17 a.m. to 11:27 a.m.)

20 THE COURT: All right. I wanted to look at
21 something having to do with the trial and how it went.

22 One of the interesting things about the case, this
23 jury -- the court reporter just checked the transcript for
24 times, and this case went to the jury at 2:14 p.m., and the
25 jury came back at 3:48 p.m. So they -- it wasn't a long

1 deliberation, but it was long enough to be substantial in
2 terms of conversation to approach the things.

3 Now, there's another exhibit, Exhibit 13, which I marked
4 down as the Green Dot transactions in this case. And G-13 was
5 admitted during Alisha Byrd's testimony, which was a summary
6 of the Green Dot cards. So it's true, the government's main
7 premise up to that point in the trial was just the straight
8 Green Dot cards. So I give some consideration to Mr. Baum's
9 argument that because of the circumstances, this Exhibit 15
10 came up during the trial. We did, indeed, have that come up,
11 and I ordered the government to give it to the defense.
12 Defense had overnight to look it, and there wasn't anything
13 brought up about it substantially; that is Exhibit 15, at that
14 point.

15 Now, we then have post-trial what we've called in this
16 hearing "anomalies."

17 I want to indicate I don't attribute any fault to the
18 government at all with regard to this. The fact is, there is
19 a different -- slightly different formatted report that's
20 exhibited in Exhibit 4 to the motion for new trial that was
21 indicated it was prepared by Ms. Marcantel as she did the
22 analysis on these. And I note that there are several
23 differences.

24 The dates, of course, are the same. The times are set
25 forth slightly differently. The time zone is set forth

1 slightly differently on the report. And while the earlier
2 Exhibit 15 says Green Dot MoneyPak with the name designator,
3 the report that Mr. Baum received, in fact, says PayPal cash.
4 And it's about -- all of those entries are payment received.
5 And from there on -- well, the completed column on Exhibit 15
6 is moved over a bit. So the point is, it's been reformatted
7 at least. Now, whether that's the explanation for the
8 anomalies, we cannot say. That's a total surmise.

9 The real essence of the motion has to do with the test
10 setup. And the *Berry* Rule 1 and 2 pretty much being
11 connected, 1 and 2, the evidence is newly discovered, was
12 unknown to the defendant at the time of trial, and the failure
13 to detect the evidence was not due to the defendant's lack of
14 diligence, those are correct.

15 I think that the situation is pointed out on the record
16 here, indicates it was newly discovered as to the defendant,
17 at least; was unknown at the beginning of trial but was
18 revealed during the course of the trial.

19 The failure to detect the evidence was not due to the
20 defendant's lack of diligence, that's certainly correct.

21 The question of cumulative or impeaching evidence is a
22 little bit closer. The evidence is somewhat cumulative;
23 however, it's slightly different. That is so say it's not
24 more of the same transactions. This evidence involves money
25 that was passed through a PayPal account and then made it to

1 the defendant by way of refund checks -- excuse me -- not by
2 way of refund checks, whereas -- and it's certainly not
3 impeaching in a way. It could be that the evidence is what I
4 would call supplementary. I think it is material evidence.
5 That is to say whether he only participated in four or five
6 direct Green Dot transactions or whether he had additional
7 PayPal Green Dot transactions is certainly material.

8 But what I really have trouble with is that the evidence
9 if introduced at a new trial would probably produce an
10 acquittal. I just don't see that. I don't see that at all
11 under the facts of the case. And particularly the fact that
12 you have the Green Dot refund checks, just by themselves, are
13 sufficient and were sufficient in my view for the jury to find
14 that this offense had taken place.

15 So, the rule under *Jaramillo* indicates that the motion
16 has to be denied if the defendant fails to demonstrate any one
17 factor. I've given this my best shot and I tried to look at
18 it very closely and be sure because of the circumstances and
19 the way that this happened during the trial, but I do not -- I
20 just don't find that even if -- well, what I see is that if
21 the defense had had it all in the beginning, page 2 would have
22 been revealed, and page 2 fleshes out every piece of the
23 transactions which I should say are captured on the
24 transaction log. The activity log expands but doesn't differ
25 from the transaction log. So on that basis, I think it's

1 appropriate to order that this motion be denied.

2 MR. BAUM: And, Your Honor, on behalf of the
3 defendant, we'd like to note our objection and assign error to
4 the Court's ruling just for purposes of --

5 THE COURT: Yeah. The objection is noted and is
6 preserved for all appellate purposes.

7 MR. BAUM: Thank you, Judge.

8 THE COURT: Thank you. And you did a great job on
9 it. I don't know what to tell you about that except you did
10 good work.

11 MR. BAUM: Thank you, Judge.

12 THE COURT: Let me go ahead now and set the case
13 for sentencing.

14 MR. BAUM: Judge, I think we may already have a
15 sentencing date set.

16 THE COURT: Did I leave it on? I'm sorry, I didn't
17 remember that.

18 MR. CAMPBELL: I think you -- because of this
19 motion, I think you moved the sentencing date back, and I
20 think it's set for August, sometime in August.

21 THE COURT: I'm sorry. Thank you for reminding me
22 of that. Let's see.

23 MR. BAUM: It might be August 20th, I'm thinking,
24 but I'm not sure.

25 THE CLERK: Its August 20th.

AO 245B

(Rev. 02/18 - WDLA) Judgment in a Criminal Case
Sheet 1**RECEIVED**

AUG 23 2019

TONY R. MOORE, CLERK
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA, LOUISIANA**UNITED STATES DISTRICT COURT**

Western District of Louisiana

Alexandria Division

UNITED STATES OF AMERICA

v.

BYRON A WYATT

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:16-CR-00134-1

USM Number: 19707-035

J Rodney Baum
Defendant's Attorney**THE DEFENDANT:**

- ☐ pleaded guilty to count(s) _____
- ☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.
- ☒ was found guilty on count(s) 1 & 2 of the Indictment
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18:201(b)(2)(A)	Graft and Conflict Of Interest - Bribery	06/10/2014	1
18:201(b)(2)(A)	Graft and Conflict Of Interest - Bribery	06/10/2014	2

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
- ☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution the defendant must notify the court and United States attorney of material changes in economic circumstances.

COPY SENT:

DATE: 8/23/19

BY: gbr

TO: USPO

Campbell w/SOR
Baum w/SORAugust 20, 2019
Date of Imposition of Judgment

Signature of Judge

DEE D. DRELL, United States District Judge

Name of Judge

Title of Judge

Date

8/22/19

DEFENDANT: BYRON A WYATT
CASE NUMBER: 1:16-CR-00134-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 24 month(s) as to count 1 & 2, with credit for time served in the custody of the U. S. Marshal Service.

☒ The court makes the following recommendations to the Bureau of Prisons:

1. The defendant be placed in protective custody - Former Correctional Officer.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2 p.m. on October 2, 2019

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

DEFENDANT: BYRON A WYATT
CASE NUMBER: 1:16-CR-00134-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: two (2) years

MANDATORY CONDITIONS (MC)

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
4. ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (check if applicable)
5. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (check if applicable)
6. ☒ You must cooperate in the collection of DNA as directed by the probation officer. (check if applicable)
7. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (check if applicable)
8. ☐ You must participate in an approved program for domestic violence. (check if applicable)
9. ☐ The passport restriction imposed at the time of initial release is hereby suspended, and defendant's passport is ordered released to defendant's attorney. (check if applicable)
10. ☐ The passport restriction imposed at the time of initial release is continued, and defendant's passport is ordered transferred to the U. S. Department of State. (check if applicable)
11. You must comply with the standard conditions that have been adopted by this court as well as any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION (SC)

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: BYRON A WYATT
CASE NUMBER: 1:16-CR-00134-1

SPECIAL CONDITIONS OF SUPERVISION (SP)

1. The defendant is subject to financial disclosure throughout the term of supervision and shall provide any financial information requested by U. S. Probation.

DEFENDANT: BYRON A WYATT
CASE NUMBER: 1:16-CR-00134-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 200.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:
- The Court orders that any federal income tax refund payable to the defendant from the Internal Revenue Service will be turned over to the Clerk of Court and applied toward any outstanding balance with regard to the outstanding financial obligations ordered by the Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, or, unless ordered otherwise, criminal debt payment may be made online at www.lawd.uscourts.gov/fees. Scroll down and click the Criminal Debt (Restitution and Fines) hyperlink to proceed to the secure online payment form.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several
- ☐ Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- ☐ The Court gives notice this case involves other defendants who may be held jointly and several liable for payment of all or part of the restitution ordered herein and may order such payment in the future.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.