

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

United States v. Shanin Moshiri

858 F.3d 1077 (7th Cir. 2017) · No. No. 16-1126 · Decided June 5, 2017

SUMMARY

The Seventh Circuit affirmed Shanin Moshiri’s conviction for receiving illegal remuneration in exchange for patient referrals to Sacred Heart Hospital in violation of the Anti-Kickback Statute. The court held that sufficient evidence showed the payments were tied to referrals, upheld the admission of expert testimony concerning physician teaching contracts, and rejected Moshiri’s constitutional vagueness challenge.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Bauer, Circuit Judge; Wood, Chief Judge; Shadid, District Judge, sitting by designation
JURISDICTION	Federal
DECIDED	June 5, 2017
DOCKET	No. 16-1126
DISPOSITION	affirmed
PROCEDURAL POSTURE	Moshiri appealed from his conviction following a bench trial in the United States District Court for the Northern District of Illinois. He challenged the sufficiency of the evidence, the admission of expert testimony, and the constitutionality of the Anti-Kickback Statute as applied.
STANDARD OF REVIEW	Sufficiency of the evidence is reviewed by viewing the evidence in the light most favorable to the prosecution and asking whether any rational trier of fact could have found the essential elements beyond a reasonable doubt. Admission of expert testimony is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Shanin Moshiri, also known as Shawni Moshiri v. United States of America

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether sufficient evidence established that Moshiri knowingly received payment in exchange for patient referrals and that the arrangement fell outside the Anti-Kickback Statute's safe harbor.
2. Whether the district court abused its discretion by admitting expert testimony concerning customary compensation and teaching contracts in podiatric residency programs.
3. Whether the Anti-Kickback Statute was unconstitutionally vague as applied to Moshiri.

HOLDINGS

1. The evidence was sufficient for a rational factfinder to conclude that Moshiri knowingly received the March 8, 2013 payment, at least in part, in exchange for patient referrals and that the arrangement took referrals into account, placing it outside the statutory safe harbor.
2. The district court did not abuse its discretion by admitting Petrov's expert testimony concerning industry norms for physician teaching contracts in podiatric residency programs.
3. The Anti-Kickback Statute is constitutional as applied to Moshiri, and a payment violates the statute if it compensates past referrals or induces future referrals; the court declined to require that referrals be the primary purpose of the arrangement.

KEY QUOTATIONS

"This evidence was sufficient to demonstrate that Moshiri's arrangement with the Hospital took into account his patient referrals, and therefore, fell outside the statute's safe harbor." (858 F.3d at 1080)

"For the same reasons set forth in that opinion, we decline to overturn Borassi, and hold that the Anti-Kickback Statute is constitutional as applied to Moshiri." (858 F.3d at 1086)

FACTUAL BACKGROUND

Moshiri entered into teaching contracts with Sacred Heart Hospital that paid him \$2,000 per month initially and \$4,000 per month beginning in 2008. Evidence showed that he performed few of the teaching and administrative duties described in the contracts, while hospital officials and Moshiri discussed lists of patients or surgeries he had referred to the hospital. After his arrest, Moshiri told an agent that the contract had become payment for patients. The district court convicted him on one count involving a March 8, 2013 payment and relied heavily on his recorded statements.

PROCEDURAL HISTORY

Moshiri was charged with three counts of receiving illegal remuneration in violation of the Anti-Kickback Statute. After waiving a jury trial, he was convicted on one count following a bench trial. The district court

denied his motion for judgment of acquittal or a new trial, and the Seventh Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- United States v. Salinas, 763 F.3d 869, 877 (7th Cir. 2014)
- Jackson v. Virginia, 443 U.S. 307, 319 (1979)
- United States v. Galati, 230 F.3d 254, 258 (7th Cir. 2000)
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)
- United States v. Allen, 269 F.3d 842, 845 (7th Cir. 2001)
- Kumho Tire Co. v. Carmichael, 526 U.S. 137, 141 (1999)
- Gayton v. McCoy, 593 F.3d 610, 616 (7th Cir. 2010)
- Metavante Corp. v. Emigrant Sav. Bank, 619 F.3d 748, 761 (7th Cir. 2010)
- United States v. Borrasi, 639 F.3d 774, 782 (7th Cir. 2011)
- United States v. Nagelvoort, 2017 WL 1959976, at *10 (7th Cir. 2017)