NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued March 4, 2025
Decided March 18, 2025

Before

MICHAEL B. BRENNAN, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

NANCY L. MALDONADO, *Circuit Judge*

No. 24-1827

UNITED STATES OF AMERICA, *Plaintiff-Appellant*,	Appeal from the United States District Court for the Southern District of Illinois.
v.	No. 22-CR-30024-SPM-3
JOHN A. SAND, *Defendant-Appellee*.	Stephen P. McGlynn, *Judge*.

O R D E R

Following an 11-day trial, a jury convicted John Sand, the Vice President of Sales at a telemarketing company, of one count of conspiracy to commit wire and mail fraud, 18 U.S.C. § 1349, eight counts of wire fraud, *id.* § 1343, and four counts of mail fraud, *id.* § 1341. The district court later granted Sand's Motion for Judgment of Acquittal, deciding that the record contained insufficient evidence that Sand knowingly participated in a scheme to defraud. The government appeals, arguing that evidence presented at trial amply supported the jury's verdict. Because a rational trier of fact could find beyond a reasonable doubt that Sand had the requisite mental state, we

reverse the district court's judgment, reinstate the jury's verdict, and remand for sentencing.

Background

John Sand worked for Simple Health, a company started by Sand's friend (and codefendant) Steven Dorfman, from 2012 to 2018. Sand was Vice President of Sales and supervised the company's sales agents. Simple Health sold "limited indemnity plans" for Health Insurance Innovations (HII). Limited indemnity plans are designed to supplement—not replace—traditional insurance because they can leave the insured vulnerable to big medical bills. Unlike comprehensive medical insurance, for example, these plans pay only fixed amounts for certain health expenses, with no cap on out-of-pocket costs. And because the plans are not governed by the Affordable Care Act, they are not required to cover prescription drugs or any specific types of treatment.

Sand, Dorfman, and Simple Health's compliance officer, Candida "Cam" Girouard, were indicted on one count of conspiracy to commit and twelve counts of committing wire and mail fraud. 18 U.S.C. §§ 1341, 1343, 1349. The indictment alleged that the defendants sold these limited indemnity plans by misleading buyers into believing that the plans covered them like major medical plans would.

At trial the government presented evidence during its case-in-chief that laid out the fraud. The jury heard from Girouard (who had pleaded guilty), an insurance expert, a compliance employee and sales employees from Simple Health, and others. The government also introduced emails and reports documenting Simple Health's business practices.

To begin, Girouard explained that she, Dorfman, and Sand agreed to engage in "deceptive sales practices" so that "[c]onsumers on the phone would be deceived with the scripts that were read." The sales scripts, Girouard explained, misled consumers to believe the offered plans provided benefits similar to those of major medical plans. In recounting Simple Health's awareness of the fraud, she testified that, after listening to recordings of Simple Health's sales pitches, HII told Simple Health that HII "hated" Simple Health's sales script because it deceived consumers about the product's details.

Here are examples of the deceptions, according to the government's evidence. Simple Health's sales script omitted telling the buyer that HII's limited indemnity plans did not cap the out-of-pocket amount that the buyer had to pay. A sales manager, Kirschner Alteme, testified regarding a report from HII criticizing an agent who, in line

with Simple Health's script, omitted the plan's specific benefits and maximums and falsely stated that the plans had "no limits." Also, as Girouard testified, sales agents were "flat out lying" to buyers that they would save "70%" off their medical bills with the limited indemnity plan. This lie began in a version of the script promising that consumers could save "up to 70%" off their medical bills. The language morphed to a promise that consumers would save 70% (rather than promising "up to" that amount). By 2015, HII determined that even telling consumers that they could save "up to 70%" was misleading and it put a "cease and desist" on the "up to 70%" language. But Simple Health continued to insert the 70% language into its scripts, and agents persisted in telling consumers that they could save "70%" or "up to 70%" through at least June of 2018.

In addition to the lies in Simple Health's script, the government presented evidence that agents also told unscripted lies to consumers. A sales agent, Katrina Ruth, testified that agents "freestyled" away from the script with more "outright lying." Alteme testified that the report from HII criticizing language from the script also criticized a sales agent for making the unscripted and "highly deceptive" statement that the limited indemnity plan's contracted rate would "consume" or "absorb" medical costs. Melissa Melendez, a compliance manager under Girouard, reported that agents misled buyers by falsely saying that the plan covered 50% of all dental procedures and had the same network as Blue Cross Blue Shield.

The government also furnished evidence that Simple Health built into its sales procedure a deceptive verification process: Once customers agreed to purchase a plan, the sales agent would transfer the customer to a different agent to confirm the purchase and run through disclosures. Alteme testified that the disclosures made during verification did not match what sales agents told customers about the limited indemnity plans, and that sales agents preemptively coached customers to ignore the differences.

For evidence about Sand's personal knowledge of the fraud, Girouard testified about Sand's position as Vice President of Sales, his familiarity with Simple Health's scripts, and his monitoring of sales calls. Girouard testified that Sand knew that Simple Health's script was not approved by HII. Girouard said Sand was "in every management meeting" where the management team derided HII's preferred script as "junk" because it would not generate enough sales for Simple Health. Alteme testified that Simple Health used a "two-script" system, where agents used Simple Health's script unless an HII representative was auditing the call. Girouard testified that Sand

knew about this system because she witnessed a time when Sand switched away from the "normal" script while HII auditors were on the sales floor.

The jury also heard during the government's case that Sand helped craft the scripts for Simple Health that HII had not approved. Girouard testified that Sand was "typically consulted on script changes." In email exchanges presented to the jury, Sand was mentioned as having reviewed script revisions, and a federal investigator testified about finding annotated versions of the script in Sand's desk.

The government also proffered evidence that Sand knew that the scripts he helped craft withheld from consumers the critical fact that HII's plans, unlike major medical plans, lack an out-of-pocket cap. JoAnn Volk, the government's expert, told the jury that the primary difference between limited indemnity plans and major medical plans was that major medical plans have an out-of-pocket cap that shifts the risk from the insured to the insurance once the cap is met. Girouard also testified that the out-of-pocket cap was a feature of major medical plans that the limited indemnity plans lacked and acknowledged that the Simple Health scripts—which were used by the sales force Sand supervised—did not mention that difference.

According to other evidence from the government's case, Sand also knew that the "70%" language was misleading and yet he let agents continue to use it anyway. Sand was copied on an email from Girouard to the sales force in 2015 explaining that it was "no longer a choice" for sales agents to promise discounts at the 70% level. Despite this direction, the promise of a discount of up to 70% remained in scripts and in the agents' sales pitches for years, as documented in notes from a leadership meeting in July 2018 (which Sand attended) stating that customers were complaining that they were deceived by sales agents using the language. Girouard said that she discussed the issue "many times" with Sand, who sometimes said he was going to allow it because he was under pressure to make sales.

Finally, during its case-in-chief, the government offered evidence that Sand knew that sales agents lied, did nothing to counter that misconduct, and sometimes rewarded it. The government showed through email exhibits that Alteme emailed the HII report identifying deceptive on and off-script statements made by a sales agent to Sand. Girouard said she spoke to Sand about agents who lied on calls. And she sent Sand emails from HII protesting that sales agents falsely told buyers that they were getting major medical plans, receiving a network discount, and buying a plan similar to Blue Cross Blue Shield Plans. Melendez spoke to Sand about agents making false statements "two to three times a week" and she emailed Sand regarding false statements that

agents were making. She also testified that the false statements became "more frequent" over time. Sand told Melendez that he could do nothing about the lying and he even promoted or rehired some known offenders.

The government offered corroborating evidence of Sand's guilt when the prosecution cross-examined him during the defense's case-in-chief. Sand conceded that the scripts omitted the fact that limited indemnity plans lack an out-of-pocket cap. And he acknowledged that of the three characteristics of a major medical plan (deductibles, copays, and out-of-pocket caps), the cap was important because it could help avert bankruptcy.

Under further cross-examination, Sand also corroborated that he knew that the sales agents worked hard to keep buyers in the dark about the absence of an out-of-pocket cap in HII's plan. Sand knew that the customer would be transferred to a verification agent, who would disclaim that the HII plan was "not a major medical plan." And Sand knew that, before this handoff, the sales agents would preemptively dismiss the disclaimer and spin it as positive. The sales agent would tell buyers that the verification agent would say that the plan was "not a major medical plan" because the purchased plan did not have "two" features of a major medical plan, "coinsurance and deductibles." The sales agents would use these two differences to make the limited indemnity plan seem attractive. ("The beauty of your plan is that it has none of those.") Sand acknowledged that the agent would not disclose that major medical plans required a third feature that the HII plans did not have—the all-important cap on out-of-pocket costs.

Finally, the government pressed Sand about the scripts that came from his own desk and contained handwritten edits. Sand initially refused to say if the handwriting was his, maintaining that he "couldn't change the scripts." But when confronted with a sample of his handwriting, Sand conceded that he had annotated the scripts.

After an 11-day trial, the jury convicted Sand on all counts. Sand then moved for judgment of acquittal. (Sand had also moved for judgment of acquittal at the close of the government's case, but the district court reserved ruling until later.) The court granted the motion, announcing at a hearing on the post-verdict motion that it did not believe the government had established that Sand was knowingly part of the conspiracy. Later, the court explained its decision in a brief written opinion, stating that "HII approved the scripts that Sand told the employees to use," and "[t]here was no evidence that Sand was part of an agreement to allow or encourage sales agents to go off script and make additional false statements and misrepresentations." The district

court also mentioned that it thought the jury was not supplied with evidence that Sand knowingly participated in a scheme with the intent to defraud as charged in counts 2–13.

Analysis

On appeal, the parties debate whether the government presented sufficient evidence to support the jury's verdict of Sand's guilt. This court reviews de novo the district court's decision to grant a motion for acquittal. *United States v. Torres-Chavez*, 744 F.3d 988, 993 (7th Cir. 2014). Overturning a jury verdict based on insufficiency of the evidence is a "nearly insurmountable hurdle." *United States v. Johnson*, 874 F.3d 990, 998 (7th Cir. 2017) (citation omitted). And in evaluating the ruling, this court views the evidence presented at trial in the light most favorable to the government, deferring to the jury in all credibility determinations. *Torres-Chavez*, 744 F.3d at 993. Sand may prevail only if the jury's take on the evidence was "wholly irrational," *United States v. Tinsley*, 62 F.4th 376, 386 (7th Cir. 2023) (quoting *United States v. Faulkner*, 885 F.3d 488, 492 (7th Cir. 2018)), and "the record contains no evidence, regardless of how it is weighed, from which the jury could find guilt beyond a reasonable doubt," *Torres-Chavez*, 744 F.3d at 993 (quoting *United States v. Blassingame,* 197 F.3d 271, 284 (7th Cir. 1999)).

The substantive law is straightforward. For the conspiracy conviction, the evidence must support a finding that Sand knowingly joined an agreement to commit fraud. *United States v. Pacilio*, 85 F.4th 450, 462 (7th Cir. 2023). And to convict for wire and mail fraud, the record must contain sufficient evidence to find that Sand knowingly participated in a scheme to defraud, with the intent to defraud. *See United States v. Weimert*, 819 F.3d 351, 355 (7th Cir. 2016).

We begin with a threshold matter. At oral argument, Sand argued for the first time on appeal that because he moved for acquittal at the close of the government's case and the district court reserved its ruling then, we may consider only the evidence presented up to that point—not any of the evidence admitted during Sand's defense—when reviewing the court's decision on the motion for acquittal. *See* FED. R. CRIM. P. 29(b). But arguments made for the first time at oral argument are waived. *Quality Oil, Inc. v. Kelley Partners, Inc.*, 657 F.3d 609, 614–15 (7th Cir. 2011). Regardless, the evidence presented in the government's case-in-chief, exclusive of the evidence admitted during the cross-examination of Sand, sufficiently supports the jury's verdict.

The government presented significant evidence that Sand knew that HII had not approved the script that Simple Health used to sell the insurance. That evidence included testimony that Sand was present at "every management meeting" discussing Simple Health's alternative sales scripts, his involvement in switching from Simple Health's "normal" script to the HII-approved scripts during HII's audits, and his role in crafting alternative sales scripts. From this evidence, the jury could conclude Sand knew that HII's approved scripts and the scripts Simple Health used were different.

The government also presented evidence from which a jury could reasonably infer that Sand knew that the sales scripts he helped craft materially misled customers (regardless of whether HII had approved the scripts). Girouard testified that she conspired with Sand and Dorfman to deceive consumers through misleading scripts, and Alteme testified regarding the report he sent Sand detailing the script's misleading statements. And the jury could reasonably infer through Alteme's testimony that Sand would have known that sales agents coached customers to ignore disclosures made during the verification process that contradicted what the sales agents said.

Further, the government may prove its fraud case against Sand with evidence that he participated in omitting material information from customers in order to generate sales, *see Weimert*, 819 F.3d at 355, and the jury heard such evidence. It heard (from the government's expert) the importance of out-of-pocket caps to customers and (from Girouard) that the scripts Sand helped write omitted that the HII plans lack out-of-pocket caps. The jury could reasonably infer from that testimony, plus the evidence of Sand's position and his practice of monitoring sales calls, that Sand knew sales agents were omitting this important information during calls to boost sales.

Finally, the jury received abundant evidence upon which it could find that Sand participated further in misleading customers by tolerating and even rewarding sales agents who misled customers. After he learned that sales agents continued for years to use the "70%" language that HII banned in 2015, he said at times that he would allow them to do so because he was under pressure to make sales. Likewise, when Melendez told Sand about agents lying to customers "two to three times a week," Sand never disciplined the agents for lying to customers despite having the power to do so; to the contrary, he sometimes promoted or rehired them.

Because a rational trier of fact could find beyond a reasonable doubt that Sand participated in defrauding consumers and knowingly and intentionally conspired with others in that fraud scheme, we REVERSE the judgment of the district court and REMAND for sentencing.