

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Criminal Action No. 01-46-SLR
)
JAMES E. BEESON, JR.,)
)
 Defendant.)

MEMORANDUM ORDER

I. INTRODUCTION

Defendant James E. Beeson, Jr. ("Beeson"), who was convicted on five counts of income tax evasion following a jury trial on March 25, 2002 (D.I. 31), moves for judgment of acquittal or a new trial. (D.I. 37) Defendant United States of America ("government") has filed its opposition (D.I. 39) and Beeson has filed a reply. (D.I. 41) For the reasons that follow, the motion is denied.

II. ARGUMENT

Beeson contends the court's refusal to instruct the jury on the standards set by the United States Supreme Court in C.I.R. v. Indianapolis Power & Light Co., 493 U.S. 203 (1990), constitutes error. (D.I. 37) In Indianapolis Power & Light, the Supreme Court held that an express or implied consensual obligation to repay renders a receipt of funds non-income. (D.I. 41) Beeson

argues the court should have instructed the jury to apply the test stated in Indianapolis Power & Light to determine whether Beeson received income regarding the pre-need funeral funds. As a consequence, the jury considered the pre-paid funeral expenses as income to Beeson which the jury in turn found he failed to report on his federal income tax forms. Beeson further asserts that there was sufficient evidence presented from which a properly instructed jury could have found that there was a "consensual recognition, express or implied, or an obligation to re-pay" which would refute any finding of income as to the other pre-need dollars. See id. at 209. He argues the amounts involved totaled \$346,000, representing over half of all the unreported income as charged by the government. Finally, Beeson contends, under the Third Circuit Court of Appeals recent holding in United States v. Syme, 276 F.3d 131, 144 (3d Cir. 2002), a conviction resulting from a jury instruction based on an erroneous interpretation of the law must be vacated. (D.I. 41)

The government asserts that the court did not abuse its discretion in not applying the standards of Indianapolis Power & Light, since after extensive argument, the court concluded the case was factually distinguishable. (D.I. 39) Further, the government submits that the court is not required to instruct the jury in the precise language requested by the defendant. United States v. Turley, 891 F.2d 57, 62 (3d Cir. 1990).

III. STANDARD OF REVIEW

The standard of review applicable for a motion for judgment of acquittal under Rule 29 of the Federal Rules of Criminal Procedure, is that all evidence must be viewed in the light most favorable to the government and all reasonable inferences must be drawn in favor of the prosecution. See United States v. Hart, 273 F.3d 363, 371 (3d Cir. 2001). The trial court must uphold the verdict of the jury unless, viewing the evidence in this fashion, no rational jury could have found the defendant guilty beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307 (1979); United States v. Coleman, 811 F.2d 804, 807 (3d Cir. 1987).

The standard is different for a motion for new trial under Rule 33 of the Federal Rules of Criminal Procedure. Under Rule 33, the court may grant a defendant's motion for new trial if mandated in the interest of justice. "Whether to grant a [Rule] 33 motion lies within the district court's sound discretion." United States v. Mastro, 570 F.Supp. 1388, 1390 (E.D. Pa 1983). A court may grant a new trial if one of two reasons exist: if after weighing the evidence, the court determines that there has been a miscarriage of justice or if a trial error had a substantial influence on the verdict. Government of Virgin Islands v. Commissiong, 706 F.Supp. 1172, 1184 (D.Vi.1989); Government of the Virgin Islands v. Bedford, 671 F.2d 758, 762

(3d Cir. 1982).

IV. ANALYSIS

After reviewing the arguments presented (D.I. 13, 23), as well as conducting a hearing on the same, the court concluded that a careful analysis of Indianapolis Power & Light rendered the holding inapposite to the evidence presented at trial. Specifically, the court found that, unlike Indianapolis Power & Light, this was not a case where the funds remained with the corporate corpus and used for corporate needs. Instead, the funds went out of the corporate corpus and to Beeson's personal use. Nothing persuasive has been presented in this motion to cause the court to revisit that decision. Further, The Third Circuit's decision in Syme does not compel this court to vacate the verdict since the decision made on the jury instruction at bar was legally valid.

V. CONCLUSION

For the reasons stated, at Wilmington this 17th day of June, 2002;

IT IS ORDERED that defendant's motion for new trial and/or motion for judgment of acquittal is denied. (D.I. 37)

Sue L. Robinson
United States District Judge