United States Court of Appeals
For the First Circuit

No. 22-1129

UNITED STATES,

Appellee,

v.

GAMAL ABDELAZIZ,

Defendant, Appellant.

No. 22-1138

UNITED STATES,

Appellee,

v.

JOHN WILSON,

Defendant, Appellant.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Nathaniel M. Gorton, U.S. District Judge]

Before

Barron, Chief Judge,
Lynch and Lipez, Circuit Judges.

Joshua C. Sharp, with whom Brian T. Kelly, Lauren A. Maynard,
and Nixon Peabody LLP were on brief, for appellant Abdelaziz.

Noel J. Francisco, with whom Yaakov M. Roth, Marco P. Basile, Harry S. Graver, Jones Day, Michael Kendall, Lauren M. Papenhausen, White & Case LLP, Andrew E. Tomback, and McLaughlin & Stern, LLP, were on brief, for appellant Wilson.

Elliott M. Davis, Kateland R. Jackson, Scott A. Chesin, and Shook, Hardy & Bacon L.L.P. on brief for Former United States Attorneys, amici curiae.

Michael J. Iacopino, Brennan Lenehan Iacopino & Hickey, Steven F. Molo, Leonid Grinberg, Justin V. Shur, Kenneth E. Notter III, and MoloLamken LLP on brief for the National Association of Criminal Defense Lawyers and the American Board of Criminal Lawyers, amici curiae.

Robert T. Smith, Mary Fleming, Timothy H. Gray, and Katten Muchin Rosenman LLP on brief for Law Professors, amici curiae.

Alexia R. De Vincentis, Assistant United States Attorney, with whom Rachael S. Rollins, United States Attorney, and Donald C. Lockhart, Ian J. Stearns, Stephen E. Frank, Leslie A. Wright, and Kristen A. Kearney, Assistant United States Attorneys, were on brief, for appellee.

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May 10, 2023

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LYNCH, **Circuit Judge**. The convictions underlying this appeal arise from a government criminal prosecution of alleged misconduct related to college admissions. The government alleged that Rick Singer -- a college admissions consultant -- and his clients engaged in various forms of bribery and fraud to help secure those clients' children's admission to competitive universities. Singer, who pleaded guilty in a separate case to multiple charges[1] and cooperated with the government's investigation, is not a defendant here, and his culpability is well established.

The defendants-appellants in this case are two parents, Gamal Abdelaziz and John Wilson, who hired Singer. Both men agreed with Singer to make payments purportedly to university accounts in exchange for university employees' securing their children's admission as athletic recruits -- a path to admission Singer referred to as the "side door."[2] Their defense at trial and on appeal is that they believed Singer's services and the side door to be legitimate and that they acted in good faith.

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[1]   Singer pleaded guilty to conspiracy to commit racketeering, see 18 U.S.C. § 1962(d); conspiracy to commit money laundering, see id. § 1956(h); obstruction of justice, see id. § 1512(c)(2); and conspiracy to defraud the United States, see id. § 371.

[2]   Singer contrasted this side door with the "front door" (admission on merit) and the "back door" (admission through large "institutional advancement" donations).

The government charged Abdelaziz and Wilson with multiple offenses based on their work with Singer. It alleged that both defendants had participated in an overarching conspiracy not only with Singer but also with other Singer clients to corruptly influence university employees through payments to university accounts, in violation of the federal programs bribery statute. See 18 U.S.C. § 666. It further alleged that Abdelaziz and Wilson conspired with other parents to commit two types of mail and wire fraud: honest services fraud, by using their payments to deprive the universities of the honest services of their employees, and property fraud, by depriving the universities of property in the form of "admissions slots." See id. §§ 1341, 1343, 1346, 1349. It also charged Wilson with several substantive counts of federal programs bribery and wire fraud, and with filing a false tax return in connection with his payments through Singer. See 26 U.S.C. § 7206(1).

A jury convicted both Abdelaziz and Wilson of all charges. The defendants challenge those convictions on a number of grounds. They contend that payments to university accounts cannot violate § 666 or constitute honest services fraud because the payments were intended for accounts owned by the universities -- the alleged victims of the scheme. They argue that the property fraud theory is invalid because admissions slots are not property, or, in the alternative, that their convictions

must be vacated because the district court erred by instructing the jury that admissions slots are property as a matter of law. And they argue that the government proved only a narrower conspiracy than the one alleged by the indictment and that this variance prejudiced them on all counts. Wilson also asserts that various forms of trial error require us to vacate his conviction for filing a false tax return. Our task in this appeal is to assess these arguments and determine whether the charged conduct falls within the specific crimes of which these defendants were convicted and whether the manner in which this case was charged and tried unacceptably deprived these two defendants of a fair trial on their own conduct, rather than the conduct of others. Nothing in this opinion should be taken as approval of the defendants' conduct in seeking college admission for their children.

We reject the defendants' argument that payments to accounts controlled by the alleged victim of a bribery scheme cannot violate § 666, which lacks any basis in the provision's text, and so deny their request for judgment of acquittal on that basis. And we affirm Wilson's conviction for filing a false tax return.

We do hold that the government's honest services theory is invalid as a matter of law under the Supreme Court's decision in Skilling v. United States, 561 U.S. 358 (2010), and that, on

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