

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 21 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DONALD MITCHELL JOHNSON, AKA
Ski Johnson,

Defendant-Appellant.

No. 15-30356

D.C. No.
2:14-cr-00028-DLC-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Dana L. Christensen, Chief Judge, Presiding

Argued and Submitted February 7, 2017
Seattle, Washington

Before: PAEZ and CALLAHAN, Circuit Judges, and ENGLAND,** District
Judge.

In 2015, Donald Johnson was found guilty of wire fraud pursuant to 18
U.S.C. § 1343. Johnson falsely represented himself as a Grammy-nominated

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The Honorable Morrison C. England, Jr., United States District Judge
for the Eastern District of California, sitting by designation.

musician while defrauding a charitable organization of thousands of dollars.

Johnson moved for acquittal under Federal Rule of Criminal Procedure 29 at the close of the Government's case, at the close of all evidence, and post-trial. On appeal, Johnson argues that the government failed to produce sufficient evidence to sustain a conviction. We have jurisdiction under 28 U.S.C. § 1291 and we affirm.

1. We review sufficiency of the evidence de novo. *United States v. Sullivan*, 522 F.3d 967, 974 (9th Cir. 2008). “There is sufficient evidence to support a conviction if, ‘viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis in original).

2. The government's indictment alleged that fraud occurred “in Montana and elsewhere.” At trial, the court limited evidence to fraud within Montana. Johnson argues that the government failed to prove the acts it alleged in the indictment because it did not prove fraud “elsewhere,” and thus his conviction should be overturned. This argument is inconsistent with Supreme Court precedent. *See United States v. Miller*, 471 U.S. 130, 136 (1985) (“[T]he right to a grand jury is not normally violated by the fact that the indictment alleges more crimes or other means of committing the same crime”).

3. Finally, Johnson argues that the government's evidence of Montana-related fraud was insufficient to support his conviction. However, the government presented ample evidence that Johnson (1) falsely claimed to a charity that he was a Grammy-nominated musician; (2) falsely claimed that his foundation was a children's charity; and (3) never donated Grammy tickets to the charity as promised. Thus, a rational jury could have concluded that Johnson was guilty of wire fraud. *See* 18 U.S.C. § 1343.

4. Johnson's conviction is **AFFIRMED**.