

NONPRECEDENTIAL DISPOSITION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

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES
Submitted July 5, 2023
Decided July 27, 2023

Before

DAVID F. HAMILTON, *Circuit Judge**

AMY J. ST. EVE, *Circuit Judge*

No. 20-3425

UNITED STATES OF AMERICA *ex rel.*
THOMAS PROCTOR,
Plaintiff-Appellant,

v.

SAFEWAY, INC.,
Defendant-Appellee.

Appeal from the United States District
Court for the Central District of Illinois.

No. 11-cv-3406

Richard Mills,
Judge.

ORDER

On April 5, 2022, we affirmed the district court's grant of summary judgment in this case because our decision in *United States ex rel. Schutte v. SuperValu Inc.*, 9 F.4th 455, 465–67 (7th Cir. 2021), held that the scienter requirement the Supreme Court announced in *Safeco Insurance Co. of America v. Burr*, 551 U.S. 47 (2007), for claims under the Fair Credit Reporting Act, also applied to claims under the False Claims Act (FCA). *United States ex rel. Proctor v. Safeway, Inc.*, 30 F.4th 649, 658–59 (7th Cir. 2022). The Supreme Court granted

* Circuit Judge Michael S. Kane was a member of the original panel in this case. He passed away on June 16, 2022, and thus did not participate in the decision of this case on remand from the Supreme Court. The case is now being resolved by a quorum of the panel under 28 U.S.C. § 46(d).

certiorari and on June 1, 2023, held that *Safeco's* scienter requirement does not apply to the FCA. *United States ex rel. Schutte v. SuperValu Inc.*, 143 S. Ct. 1391, 1402–03 (2023). Instead, the Supreme Court held that plaintiffs may establish scienter under the FCA by showing that defendants “(1) actually knew that their reported prices were not their ‘usual and customary’ prices when they reported those prices, (2) were aware of a substantial risk that their higher, retail prices were not their ‘usual and customary’ prices and intentionally avoided learning whether their reports were accurate, or (3) were aware of such a substantial and unjustifiable risk but submitted the claims anyway.” *Id.* at 1404 (citing 31 U.S.C. § 3729(b)(1)(A)). The Supreme Court vacated the judgment of this court and remanded for further proceedings. Pursuant to Circuit Rule 54, the parties took the position that we should vacate the June 15, 2020, judgment of the district court and remand for further proceedings in light of the Supreme Court’s clarification of the proper scienter standard.

We agree with the assessment of both parties. We thus VACATE the judgment of the district court and REMAND to the district court for the Central District of Illinois for further proceedings in light of the Supreme Court’s opinion in *Schutte*. Further, the district court relinquished its jurisdiction over the plaintiffs’ remaining state law claims when it granted summary judgment on the FCA claims. On remand, the district court should revisit the question of supplemental jurisdiction. *See Stockton v. Milwaukee County*, 44 F.4th 605, 621 n.4 (7th Cir. 2022).