**NONPRECEDENTIAL DISPOSITION**
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# United States Court of Appeals

**For the Seventh Circuit**
**Chicago, Illinois 60604**

Argued November 28, 2023
Decided November 30, 2023

**Before**

FRANK H. EASTERBROOK, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 22-2525

UNITED STATES OF AMERICA,
*Plaintiff-Appellee*,

*v.*

FERNANDO ZAMBRANO,
*Defendant-Appellant*.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:20-CR-00049

Edmond E. Chang, *Judge*.

**O R D E R**

A jury convicted Fernando Zambrano of lying when answering two federal agents' questions about whether Zambrano (a local police officer working with federal agents in drug cases) had discussed a particular subject with an informant. 18 U.S.C. §1001. The judge sentenced Zambrano to three months' imprisonment (which has been served) and six months' supervised release. Zambrano's appeal presents multiple arguments, but the district judge's four thorough opinions enable us to be brief.

1. Zambrano filed two pretrial motions to dismiss the indictment, and the district judge denied each motion. 2021 U.S. Dist. LEXIS 158212 (N.D. Ill. Aug. 21, 2021); 2021 U.S. Dist. LEXIS 181287 (N.D. Ill. Sept. 22, 2021). The judge's analysis does not require elaboration. We add only that, once a jury has found guilt beyond a reasonable doubt, the quality of the evidence presented to a grand jury no longer matters. See, e.g., *United States v. Mechanik*, 475 U.S. 66 (1986); *United States v. Williams*, 504 U.S. 36 (1992).

2. The district judge instructed the jury this way on materiality:

> A statement is "material" if it is capable of influencing the actions of the Federal Bureau of Investigation (FBI) or the Department of Homeland Security – Office of Inspector General (DHS-OIG). The government is not required to prove that the statement actually influenced the actions of the FBI or DHS-OIG.
>
> A statement may be material even if the FBI or DHS-OIG agents believed that it was false at the time of the statement. A statement also may be material if the statement casts suspicion away from the speaker or misdirects the agents, even if the statement does not succeed in doing so.

The first paragraph comes from this circuit's pattern jury instructions, modified to name the agencies involved. It is a correct statement of law. See, e.g., *United States v. Gaudin*, 515 U.S. 506, 509 (1995) (a false statement is material if it has "a natural tendency to influence, or be capable of influencing, the decision of the decisionmaking body to which it was addressed.") (cleaned up). The second paragraph is not in the pattern instructions but likewise is a correct statement of law. See, e.g., *United States v. R. Enterprises, Inc.*, 498 U.S. 292 (1991) (holding, in the context of a subpoena-enforcement proceeding, that the prosecutor's knowledge of the truth does not permit a suspect to withhold or lie about information). The district judge's analysis, see 2021 U.S. Dist. LEXIS 246544 (N.D. Ill. Dec. 28, 2021) at *19–22, further shows why Zambrano's arguments are incorrect.

3. The jury asked two substantive questions during its deliberations. Zambrano contends that the district court gave incorrect answers to both. The district judge patiently covered these contentions and showed why the answers were appropriate and not misleading. *Id*. at *22–29. Indeed, defense counsel agreed with the way the judge handled the second question, so that issue has been waived. *Id*. at *26.

4. After the trial concluded, another district judge found that Special Agent Tony Chesla, of the Inspector General's Office in the Department of Homeland Security, had

permitted a witness in a different case to testify that no rewards had been promised for the witness's testimony, despite a "mutual understanding" that Chesla would help the witness in immigration matters. See *United States v. Dekelaita*, 2022 U.S. Dist. LEXIS 171466 (N.D. Ill. Sept. 22, 2022). Chesla was one of two agents who interviewed Zambrano, received the lies that led to his conviction, and testified about that interview at trial. Zambrano contends that knowledge of Chesla's inappropriate conduct in *Dekelaita* would have enabled Zambrano's lawyer to cross-examine Chesla more effectively, and that the United States thus violated the rule of *Brady v. Maryland*, 373 U.S. 83 (1963), as applied to impeachment evidence in *United States v. Bagley*, 473 U.S. 667 (1985).

As the district judge observed when denying Zambrano's motion for a new trial, however, the district judge in *Dekelaita* did not reach his conclusion until almost a year after Zambrano's trial. Findings yet to be made could not have been "disclosed". Nor does Zambrano offer any evidence that the prosecutors in his case knew at the time of his trial that Chesla had permitted misleading testimony to stand in a different case.

More than that: the judge in *Dekelaita* ultimately concluded that Agent Chesla's silence when he should have spoken did not spoil that conviction. (That question has been raised on Dekelaita's appeal, No. 22-2911, to be argued on January 23, 2024. We do not express any opinion on any issue in *Dekelaita*.) Given that Dekelaita's conviction remains in force, it is hard to see how there could be a problem with Zambrano's. He concedes in this court that he knowingly gave false answers. He denies only that his answers were material to an investigation into what happened to $50,000 in "buy money" supposedly given to the informant. Yet materiality does not depend on Chesla's credibility. The interview was recorded, the full recording was available to the jury, and materiality was demonstrated by the need to understand whether Zambrano and the informant may have coordinated their responses in order to frustrate the investigation. See the district court's order of February 26, 2023.

Other contentions have been considered but do not require discussion.

AFFIRMED