

2. That without it a jury might have reached a different conclusion; [and]

3. That the party seeking the new trial was taken by surprise when the false testimony was given and was unable to meet it or did not know of its falsity until after the trial.

United States v. Meyers, 484 F.2d 113, 116 (3d Cir. 1973).

Instead of using this so-called Larrison test, Schoenbohm says, the district court applied a sufficiency of the evidence standard. On denying Schoenbohm's first motion for a new trial, the district judge stated: "I am denying the motion because looking at the evidence as I must in the light most favorable to the Government, I find that there was sufficient evidence for the jury to have returned a verdict of guilty." On denying Schoenbohm's second motion for a new trial, the district judge noted: "[T]he use of [Exhibit] 5B, while giving the court some thought overall, I cannot say that given all the other evidence in the case that it would have denied the defendant a fair trial."

Application of the Larrison test does not help Schoenbohm. Even if Exhibit 5B had not been introduced, there is still no possibility that "the jury might have reached a different conclusion" on Count I because Exhibit 5B was not relevant to Count I.

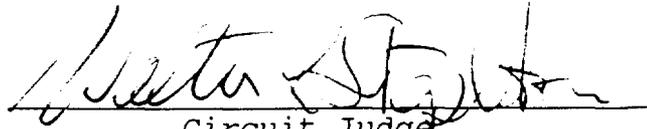
## VI.

The judgment of the district court will be affirmed.

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TO THE CLERK:

Please file the foregoing Memorandum Opinion.

  
Circuit Judge

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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NO. 93-7516

---

UNITED STATES OF AMERICA

v.

HERBERT L. SCHOENBOHM,

Appellant

---

Appeal from the United States District Court  
For the District of the Virgin Islands  
(D.C. Crim. No. 91-00108)  
District Judge: Honorable Anne E. Thompson

---

Argued April 18, 1994

BEFORE: STAPLETON, ALITO and WEIS, Circuit Judges

---

JUDGMENT

This case came on to be heard on the record before the  
United States District Court for the District of the Virgin  
Islands and was argued on April 18, 1994,

On consideration whereof, it is

ORDERED AND ADJUDGED by this Court that the judgment of  
the district court entered July 12, 1993, be and the same is  
hereby affirmed.

ATTEST:

*P. Douglas Sisk*

---

Clerk

Dated: JUL 22 1994

Certified as a true copy and issued in lieu  
of a formal mandate on November 10, 1994.

Teste:

*P. Douglas Sisk*

Clerk, U.S. Court of Appeals for the Third Circuit.

(17)

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

NO. 93-7516

UNITED STATES OF AMERICA

v.

HERBERT L. SCHOENBOHM

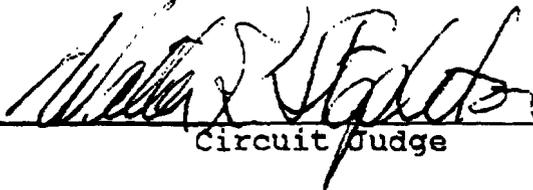
Appellant

SUR PETITION FOR PANEL REHEARING

BEFORE: STAPLETON, ALITO and WEIS, Circuit Judges

The petition for panel rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court, and no judge who concurred in the decision having asked for panel rehearing, the petition for panel rehearing is denied.

By the Court,

  
\_\_\_\_\_  
Circuit Judge

Dated: NOV 02 1994

RECEIVED AND FILED

11-2-94 AM

P. DOUGLAS DEK.

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

CLERK OF THE COURT  
ST. THOMAS, V.I.

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UNITED STATES OF AMERICA : CRIMINAL  
v. :  
HERBERT L. SCHOENBOHM : NO. 91-108

ORDER

AND NOW, this <sup>28<sup>th</sup></sup> day of February, 1995, upon consideration of defendant's motion to vacate conviction pursuant to F.R.Crim.P. 52(a) and (b), and the memoranda and other materials submitted in support of the motion, it is ORDERED:

That the motion is DENIED, because the issues raised by this motion have previously been decided by the United States Court of Appeals for the Third Circuit, in affirming defendant's conviction.

*John P. Fullin*  
\_\_\_\_\_  
Sr. J.

3/15/95  
COC: U.S.A.  
MR SCHOENBOHM  
ATTY: JACOBS

CERTIFIED A TRUE COPY THIS  
28 DAY OF March 19 95  
ORINN F. ARNOLD  
CLERK OF THE COURT  
*Orinn F. Arnold*  
DEPUTY

9.