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Kelly v. United States—Supreme Court Overturns “Bridgegate” Convictions

The U.S. Supreme Court Reaffirms that, to Be Punishable as Wire or Federal-Program Fraud, the Core Purpose of a Fraudulent Scheme Must Be to Obtain Money or Property.

SUMMARY

On May 7, 2020, the U.S. Supreme Court unanimously reversed the convictions of two associates of then-New Jersey Governor Chris Christie involved in the “Bridgegate” scandal, in which the defendants realigned two lanes of the George Washington Bridge as a form of political retribution against the mayor of Fort Lee, New Jersey, for the mayor’s refusal to support Christie’s 2013 reelection campaign. The Court explained that, to sustain the defendants’ convictions for wire and federal-program fraud, the government was required to prove that the specific object of their fraud was to obtain money or property. Because the government failed to prove that obtaining money or property was the central purpose of the defendants’ scheme, the Court overturned the defendants’ convictions.

BACKGROUND

In an effort to establish strong bipartisan support for then-Governor Christie’s 2013 reelection campaign, Bridget Anne Kelly, Christie’s Deputy Chief of Staff, courted various mayors for their endorsements, including the mayor of Fort Lee, New Jersey, Mark Sokolich. In summer 2013, Mayor Sokolich informed Kelly’s office that he would not back the governor’s campaign. In retaliation, Kelly and two officials from the Port Authority of New York and New Jersey (the “Port Authority”)—William Baroni, Deputy Executive of the Port Authority, and Daniel Wildstein, Baroni’s chief of staff—devised a scheme to cause, as Kelly wrote in an email, “some traffic problems in Fort Lee.”

The George Washington Bridge, the world's busiest motor-vehicle bridge, connects Manhattan and Fort Lee. For decades, three of the Bridge's 12 feeder lanes had been designated to serve motor vehicles coming from Fort Lee during the morning commute. Kelly, Baroni, and Wildstein directed the Port Authority to reallocate two of those lanes, leaving a single lane open for vehicles coming from Fort Lee. To implement this scheme, the Port Authority hired an extra "on call" toll collector so that the sole remaining lane would not be closed if the lane's toll collector had to take a break. Kelly, Baroni, and Wildstein concocted a "cover story" for the lane closures, claiming that the unannounced change was part of a "traffic study." As part of this cover story, the Port Authority asked its traffic engineers to collect "some numbers" about the resulting traffic. Neither Baroni nor Wildstein ever reviewed the information collected.

The scheme was executed on September 9, 2013. Predictably, as a result, the streets of Fort Lee came to a standstill with school buses parked in traffic for hours. The lane closures continued for three more days, ending only when the Executive Director of the Port Authority learned of the scheme and reversed the action.

Kelly, Baroni, and Wildstein were fired and soon became subject to investigation by the U.S. Department of Justice. Ultimately, Wildstein pleaded guilty to conspiracy charges and cooperated with the government. Kelly and Baroni went to trial on charges of wire fraud, federal-program fraud, and conspiracy to commit each. The jury convicted on all counts. The Court of Appeals for the Third Circuit affirmed Kelly's and Baroni's convictions. The Supreme Court granted certiorari and reversed the Third Circuit's decision.

THE COURT'S DECISION

In overturning the defendants' convictions, the Court recognized that "[t]he evidence the jury heard no doubt shows wrongdoing—deception, corruption, abuse of power." Regardless, the Court explained that "the federal fraud statutes at issue do not criminalize all such conduct." Rather, as the Court previously held in *McNally v. United States* and *Cleveland v. United States*,¹ the wire fraud statute, 18 U.S.C. § 1343,² and the federal-program fraud statute, 18 U.S.C. § 666(a)(1)(A),³ required the government to prove that "an object of [the defendants'] dishonesty was to obtain the Port Authority's money or property." The Court concluded that each of the government's prosecution theories for this element was flawed.

The government argued that its prosecution was consistent with those precedents because Kelly and Baroni had in fact taken Port Authority property by "commandeering" certain physical lanes of the Bridge entryway. The Court rejected this argument, characterizing the lane realignment as a "run-of-the-mine exercise of regulatory power [that could not] count as the taking of property."

The Court similarly rejected the government's argument that Kelly and Baroni had deprived the Port Authority of money through "the costs of compensating the traffic engineers and back-up toll collectors who performed work relating to the lane realignment." The Court recognized that "[a] government's right to its employees' time and labor . . . can undergird a property fraud prosecution." The Court concluded, however,

that the services of Port Authority employees and their associated costs were not the “object of the fraud,” but merely “an incidental (even if foreseen) byproduct” of the scheme. Only when a defendant actually sought to defraud the Port Authority of the “cost of [the] employees’ services” would the charged statutes’ money or property requirement be met. Concluding that that was not the object of the Bridgegate scheme, the Court held that the government had not established a violation of the federal wire fraud or federal-program fraud statutes.

To rule otherwise, the Court noted, would effect “a sweeping expansion of federal criminal jurisdiction,” effectively empowering the federal government to “use the criminal law to enforce (its view of) integrity in broad swaths of state and local policymaking.” The Court reconfirmed that, as it held in *McNally* and *Cleveland*, it is not the province of the federal government to “set[] standards of disclosure and good government for local and state officials.”

IMPLICATIONS

The Bridgegate prosecution demonstrates the Department of Justice’s frequent use of the federal fraud statutes for matters ranging from insider trading and Medicare overbilling to public corruption and foreign bribery. A number of recent Department of Justice indictments—including actions against parents in the *Varsity Blues* college-admissions prosecution, traders in market manipulation cases, and managers and engineers in auto emissions-related litigation—also have relied on wire fraud as a primary charging theory.

Kelly continues the Supreme Court’s resistance to an expansive use of the wire, mail, and honest services fraud statutes in white collar and corruption-related proceedings.⁴ For example, the Supreme Court’s 2000 decision, *Cleveland v. United States*, repeatedly cited by the *Kelly* court, held that the allocation of state and municipal licenses does not qualify as misused “property” for purposes of the federal mail fraud statute, 18 U.S.C. § 1341.⁵ Ten years later, in *Skilling v. United States*, which addressed the prosecution of an executive of Enron Corporation, the Court limited the federal honest services fraud statute, 18 U.S.C. § 1346,⁶ to encompass only bribery and kickback schemes.⁷ More recently, in 2016, the Supreme Court overturned the conviction of former Virginia Governor Robert McDonnell and his wife for honest services fraud as interpreted under the federal bribery statutes.⁸ As in *Kelly*, the unanimous Court in *McDonnell v. United States* found the conduct at issue “distasteful,” but nonetheless expressed concern “with the broader legal implications of the Government’s boundless interpretation of the federal bribery statute.”⁹

As in *Skilling* and *McDonnell*, the Supreme Court did not dispute that Kelly and Baroni had engaged in deception or malfeasance. Indeed, the Court acknowledged that the defendants engaged in the charged conduct “for bad reasons; and they did so by resorting to lies.” The government had to do more, however, than simply show immoral or unethical behavior on the part of the defendants. Because the principal goal of the charged scheme was not “to obtain money or property,” it was not punishable under the federal fraud laws. *Kelly* reaffirms the proposition that the federal fraud statutes do not address every type of

manipulation or deceit, and must be limited to fraud in which the acquisition of money or property is front and center.

Kelly distinguished, and therefore appears to leave intact, prosecutions under federal law based upon the misuse of employees' "time and labor" as a form of property fraud. The Court identified two fact patterns illustrating this type of fraud: a mayor's use of "on-the-clock" city workers to renovate his daughter's new home and a city parks commissioner's inducement of park employees to do gardening work for political contributors. Under both scenarios, the "cost of those employees' services would qualify as an economic loss to the city," constituting a monetary loss that is sufficient to sustain a conviction under the fraud statutes. The Court explained that in those fact patterns, the entire purpose of the fraud was to obtain the employees' labor, rather than a "bit part to the scheme." Future federal prosecutions will likely focus on this key issue—whether the misuse of labor or services resulting in an economic loss is the primary objective of the fraud or simply a byproduct of the criminal conduct.

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ENDNOTES

- ¹ *McNally v. United States*, 483 U.S. 350 (1987); *Cleveland v. United States*, 531 U.S. 12 (2000).
- ² Section 1343 makes it unlawful to "devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises"
- ³ Section 666(a)(1)(A) bars "obtain[ing] by fraud, or otherwise without authority knowingly convert[ing] the use of any person other than the rightful owner or intentionally misappl[ying] property"
- ⁴ Although the Supreme Court's recent decisions have largely narrowed the understanding of criminal fraud statutes, the Court has also issued decisions expanding the scope of these fraud statutes. See *Loughrin v. United States*, 573 U.S. 351, 353 (2014) (holding that the bank fraud statute, 18 U.S.C. § 1344(2), does not require the government to prove that a defendant intended to defraud a financial institution); *Pasquantino v. United States*, 544 U.S. 349, 353 (2004) (holding that the federal wire fraud statute criminalizes schemes to defraud a foreign government of tax revenue).
- ⁵ *Cleveland v. United States*, 531 U.S. 12, 18–27 (2000). Section 1341, like Section 1343, makes it unlawful to "devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises"
- ⁶ Section 1346 provides that, "[f]or the purposes of this chapter, the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services."
- ⁷ *Skilling v. United States*, 561 U.S. 358, 367, 409–11 (2010).
- ⁸ *McDonnell v. United States*, 136 S. Ct. 2355, 2365 (2016).
- ⁹ *Id.*

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