

CRIMINAL DEFENSE

ALERT

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Supreme Court: Derailing Traffic for Political Revenge Might Be Unpalatable, But Does Not Violate Federal Fraud Statutes

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On May 7, 2020, the United States Supreme Court overturned two criminal convictions connected to the Bridgegate case, concluding that the defendants' conduct did not violate the federal fraud statutes at issue. *Kelly v. United States*, No. 18-1059, 2020 WL 2200833, slip op. (U.S. Sup. Ct. May 7, 2020). Despite overwhelming evidence that the defendants orchestrated a scheme to derail traffic from the Borough of Fort Lee, New Jersey to exert political revenge on Fort Lee's Mayor, the Court found the federal statutes do not criminalize such conduct.

Undertaking political maneuvering perhaps more appropriate to a television drama, the defendants sought to punish the Mayor of Fort Lee for his refusal to support former New Jersey Governor Chris Christie during his re-election campaign. Acting in their capacities as Chief of Staff for Governor Christie and Port Authority Deputy Executive Director, the defendants colluded to reduce the number of lanes reserved at the George Washington Bridge toll plaza for Fort Lee's morning commuters. To disguise their efforts at political retribution, the defendants claimed that the lane realignment was for a traffic study. The lane realignment caused four days of gridlock in Fort Lee, and only ended when the Port Authority's Executive Director learned of the scheme. At trial, the federal jury convicted the defendants of wire fraud, fraud of a federally funded program or entity (the Port Authority), and conspiracy. The Court of Appeals for the Third Circuit confirmed the defendants' convictions and the Supreme Court granted the defendants' request for review.

The Supreme Court's analysis of the statutes at issue focused on the defendants' motivation to commit fraud. The wire fraud statute makes it a crime to effect "any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises." 18 U.S.C. § 1343. The defendants were also convicted of fraud on a federally funded program or entity, which covers conduct that involves "obtain[ing] by fraud" the "property" (including money) of a federally funded program or entity like the Port Authority. 18 U.S.C. § 666(a)(1)(A). Under either provision, the Government had to prove beyond a reasonable doubt that the defendants engaged in deception and that the object of their fraud was to gain property or money.

To further illustrate the point, the Court explained – as it has before – that federal criminal statutes do not authorize federal prosecutors to "set standards of disclosure and good government for local and state officials." Instead, criminal conduct is limited to circumstances involving bribes, kickbacks, schemes in which the official in question had a financial interest, or where the dishonesty or deception is done with the purpose of obtaining money or property. Much of governance involves regulatory choice. If every lie or perceived deception by local or state officials acting in their official capacities could be the basis of criminal charges, the result would be "a sweeping expansion of federal criminal jurisdiction."

In the *Kelly* decision, political retribution motivated the defendants as opposed to financial greed. The defendants engaged in "deception, corruption, [and] abuse of power. But the federal fraud statutes at issue

do not criminalize all such conduct.” Although dramatic and uncommon, the Supreme Court’s decision to overturn the Bridgegate convictions was grounded in longstanding jurisprudence requiring the Government to pursue prosecution only where there is proof that the conduct at issue was made criminal by the legislature. Public corruption prosecutions often rest in the grey area of human conduct and historically have involved prosecutors pursuing theories of criminal responsibility not previously sought or specifically prescribed by statute.

The Court’s decision sends a clear message to prosecutors that they are to strictly construe criminal statutes and only seek conviction for conduct specifically contemplated by the legislature. ♦

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