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IN THE

Supreme Court of the United States

ANNE M. LYNCH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondents.

On Petition for a Writ of Certiorari to
the United States Court of Appeals for the First Circuit

APPENDIX

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October 20, 2025

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For the First Circuit

No. 23-1508

UNITED STATES OF AMERICA,

Appellee,

v.

DANA A. PULLMAN,

Defendant, Appellant.

No. 23-1510

UNITED STATES OF AMERICA,

Appellee,

v.

ANNE M. LYNCH,

Defendant, Appellant.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Douglas P. Woodlock, U.S. District Judge]

Before

Barron, Chief Judge,
Kayatta and Aframe, Circuit Judges.

Judith Mizner, Assistant Federal Public Defender, Federal Defender Office, District of Massachusetts, for appellant Dana A.

Pullman.

Scott P. Lopez, with whom Lawson & Weitzen, LLP was on brief, for appellant Anne M. Lynch.

Alexia R. De Vincentis, Assistant U.S. Attorney, with whom Joshua S. Levy, Acting U.S. Attorney, was on brief, for appellee.

June 2, 2025

KAYATTA, Circuit Judge. These consolidated appeals arise from the convictions of Dana A. Pullman, former Massachusetts State Police (MSP) trooper and former president of the State Police Association of Massachusetts (the "Union"), and Anne M. Lynch, former head of the political lobbying firm Lynch Associates, for various federal crimes arising out of alleged kickback schemes between the two.

Because the government concedes acquittal should have been entered for the wire fraud convictions of both defendants and for one count of Lynch's tax fraud convictions, we reverse the judgment on those counts. We also find the evidence insufficient to support Lynch's conviction for obstruction of justice by attempting to manipulate records in response to a subpoena, and therefore reverse on that count. Otherwise, having considered the defendants' arguments on appeal, we affirm their convictions for honest-services wire fraud, obstruction of justice, conspiracy to defraud the United States, and a racketeering conspiracy. Our reasoning follows.

I.

We begin with Pullman and Lynch's challenges to their honest-services wire fraud convictions. In so doing, "[w]e recount the essential facts of the case, drawn from the trial record, in the light most favorable to the verdict." United States v. Mubayyid, 658 F.3d 35, 41 (1st Cir. 2011).

A.

As head of the Union, Pullman sought to resolve a longstanding dispute with the Commonwealth of Massachusetts (the "Commonwealth") over the payment of troopers for work done on days off, known as the "days off lost" (DOL) grievance. As negotiations with the Commonwealth heated up, Pullman recruited Lynch Associates to help. At that time, Lynch owned the firm, which also employed two of her sons, Peter and Greg D'Agostino.[1] Prior to Pullman's tenure as president, the Union had engaged Lynch Associates for lobbying and public relations work, compensating the firm with a total monthly retainer of $9,500. Pullman also had a longstanding individual relationship with Lynch; they had grown up in the same town, were friends, and had for years worked together on lobbying matters. So, in April 2013, Pullman hired Lynch Associates for the additional project of overseeing the process of compiling and analyzing troopers' calendars to calculate retroactive DOL payments, in addition to participating in negotiations with the Commonwealth.

The terms of Lynch Associates' engagement were set forth in a new written agreement. Under that contract, Lynch Associates agreed to complete the project for a "fixed cost of $200,000," a quarter of which would be paid upfront, with the remainder to be

[1] To avoid confusion, we refer to Greg D'Agostino as "D'Agostino" and Peter D'Agostino by his full name.

paid at the presentation of a final report. The contract further provided that "any changes to th[e] agreement [would] be valid only when agreed upon in writing and signed by both parties."

D'Agostino took the lead on Lynch Associates' work on the DOL grievance. Per the April 2013 contract, D'Agostino recruited temporary staff to assist with sorting through records; trained them; and began a comprehensive review. As the work progressed, however, its "scope and detail . . . really exceeded" D'Agostino's and Lynch Associates' expectations. Because the Union was seeking retroactive overtime pay for its members, prosecuting that grievance required sorting through trash bags full of eight years' worth of paper calendars and developing a formula for addressing missing records.

As a result, in December 2013, D'Agostino and Lynch met with Pullman to ask for an increase to their agreed-upon fee, presenting him with an invoice for close to $500,000 as a revised estimated value for their services on the DOL grievance. Pullman pushed back on that figure, citing disagreement with the suggested hourly rate for D'Agostino's labor. At some point later that month, Lynch called D'Agostino to tell him that Pullman came around -- not to the full figure Lynch Associates had requested, but to a total fee of $350,000, up from the $200,000 originally specified in the April 2013 contract. There was no written

contract or documentation confirming this arrangement to pay an increased fee.

In August 2014, the Union and the Commonwealth reached a settlement on the DOL grievance. The Commonwealth agreed to pay approximately $21 million in retroactive overtime pay to MSP troopers and $9 million in days credited to troopers. The Commonwealth also agreed to reimburse the Union for $350,000 of its expenses incurred in the Union's pursuit of the grievance.

Notwithstanding the settlement of the Union's grievance, Lynch Associates did not immediately receive payment for their work on the grievance. Unbeknownst to Lynch and D'Agostino, Pullman was experiencing pressure from Union officials not to pay the firm more than what the April 2013 contract specified. As Lynch Associates waited for compensation, Lynch called D'Agostino and, according to D'Agostino's testimony at trial, "indicated [to D'Agostino] that [Pullman] had hit her up for a check."

On October 27, 2014, the Union received the Commonwealth's reimbursement check, as per the settlement agreement. On November 5, Pullman visited the office of Union Treasurer Andrew Daly, seeking a $250,000 check for Lynch Associates. Knowing that the Union had already paid Lynch Associates $100,000 in connection with the DOL grievance and believing that the previously agreed-upon total sum of $200,000 was "a hell of a lot of money," Daly objected to this new payment.

He told Pullman that the requested amount "seem[ed] like too much" since Lynch Associates was "already on a retainer," and that it seemed like the Union was getting "fleeced." In response to these objections, Pullman "banged [his hand] on the desk and told [Daly] to stop breaking his fucking balls and give him the check." Daly testified that he had never seen Pullman act "like that" before and that he seemed like "a different person." According to his testimony at trial, Daly felt at the time that he "should have minded [his] own business and just given [Pullman] the check." He therefore did so without further protest.

The day after the encounter in Daly's office, the $250,000 check from the Union was deposited into Lynch Associates' bank account. A week later, Lynch took an owner's draw from Lynch Associates' bank account for $50,000, and then cut a $20,000 personal check to Pullman's wife, which was deposited into Pullman and his wife's joint bank account on November 12, 2014.

B.

Based on these events, Pullman and Lynch were each convicted of one count of honest-services wire fraud. The federal wire fraud statute criminalizes the use of wires in furtherance of "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. To obtain a conviction, the government must show "the defendant's knowing and

willing participation in a scheme or artifice to defraud with the specific intent to defraud." United States v. Falcón-Nieves, 79 F.4th 116, 126 (1st Cir. 2023) (citation omitted). Section 1343 is supplemented by 18 U.S.C. § 1346, which specifies that the "scheme or artifice to defraud" language in § 1343 includes "a scheme or artifice to deprive another of the intangible right of honest services." A classic example is a scheme to pay a bribe or a kickback to an agent without the knowledge of the principal. See Skilling v. United States, 561 U.S. 358, 404, 408–09 (2010). The government's claim, in brief, is that the $20,000 paid to Pullman's wife was just such an undisclosed bribe or kickback.

Pullman and Lynch first challenge the sufficiency of the evidence to support their convictions for honest-services wire fraud.[2] Next, they seek a new trial on the basis of alleged errors

[2] In a pair of footnotes in her opening and reply briefs, Lynch seeks to incorporate by reference Pullman's arguments. We allow such incorporation in a consolidated case like this one, at least where the evidence is materially the same in the cases against both defendants. See Fed. R. App. P. 28(i) ("In a case involving more than one appellant or appellee, including consolidated cases, . . . any party may adopt by reference a part of another's brief . . . [and] reply brief[]."); United States v. David, 940 F.2d 722, 737 (1st Cir. 1991) (requiring arguments to be "readily transferrable from the proponent's case to the adopter's case" in order to be incorporated). Here, the government does not argue that Pullman's arguments do not apply to Lynch, and as a result, we treat Pullman's arguments as applying to both. However, we do not apply Lynch's arguments to Pullman, since he does not request that we do so. We refer to "Pullman and Lynch" where an argument applies to both -- even if made only in Pullman's briefing -- and only "Lynch" where she makes an independent argument.

in the jury instructions for this count. Finally, Lynch separately challenges the honest-services wire fraud statute as unconstitutionally overbroad. We address each argument below.

1.

a.

Pullman and Lynch preserved their sufficiency-of-the-evidence challenges below by moving for judgments of acquittal on all counts at the close of evidence at trial and by renewing their motions after trial. See Fed. R. Crim. P. 29(a), 29(c), 33. We therefore review these challenges de novo. United States v. Buoi, 84 F.4th 31, 37 (1st Cir. 2023).

We affirm a district court's denial of a request for acquittal if "a rational juror 'could find that the government proved all the elements of the offense beyond a reasonable doubt.'" United States v. Ramos-Baez, 86 F.4th 28, 48 (1st Cir. 2023) (quoting United States v. Fuentes-Lopez, 994 F.3d 66, 71 (1st Cir. 2021)). In doing so, we take the evidence in the light most favorable to the government and draw all reasonable inferences in favor of the verdict. Fuentes-Lopez, 994 F.3d at 71. "To uphold a conviction, the court need not believe that no verdict other than a guilty verdict could sensibly be reached, but must only satisfy itself that the guilty verdict finds support in 'a plausible rendition of the record.'" United States v. Sabean, 885 F.3d 27, 46 (1st Cir. 2018) (quoting United States v. Williams,

717 F.3d 35, 38 (1st Cir. 2013)). We may uphold a conviction based on circumstantial evidence, id. at 46–47, though we may not "stack inference upon inference in order to uphold the jury's verdict," United States v. Guzman-Ortiz, 975 F.3d 43, 55 (1st Cir. 2020) (citation omitted).

b.

To convict Pullman and Lynch of honest-services wire fraud under § 1343 and § 1346, the government had to prove beyond a reasonable doubt that (among other things) the $20,000 check from Lynch to Pullman's wife was a bribe or a kickback. See Percoco v. United States, 598 U.S. 319, 327–28 (2023); Kelly v. United States, 590 U.S. 391, 398–99 (2020); see also United States v. Abdelaziz, 68 F.4th 1, 29–33 (1st Cir. 2023) (considering whether the government's case evidenced bribery under Skilling). At trial, the government's case centered on the theory that Pullman agreed to cause the Union to make good on his verbal offer of an extra $150,000 to Lynch Associates (above the $200,000 specified in the contract), in exchange for a payment to Pullman from Lynch.

Pullman and Lynch challenge the sufficiency of the evidence to prove this theory. Specifically, they argue that both bribes and kickbacks require quid pro quos, and here there were none. The government makes no argument that a quid pro quo was not required, so we assume, without deciding, that it was. We therefore focus on whether the evidence was sufficient to support

a finding beyond a reasonable doubt of a quid pro quo: an agreement to exchange a thing of value for a favorable act or treatment of some kind.

As a reminder, D'Agostino testified that in December 2013, Pullman and Lynch verbally agreed to increase Lynch Associates' compensation for work on the DOL grievance negotiation from the flat fee of $200,000 enshrined in their previous written agreement to a total of $350,000. Without any documentation to confirm that change (let alone the signed writing required by the contract's terms), Lynch depended on Pullman to find a way to secure full payment. So stood matters when Pullman "hit [Lynch] up for a check." In this manner, the evidence at trial showed that Pullman requested a payment when Lynch Associates had no certain path to enforce its unwritten agreement for increased compensation and when Pullman alone wielded the power to clear that path. It would thus have been entirely reasonable for the jury to infer that Pullman and Lynch reached a coda to their verbal agreement: Pullman would deliver on the payment as agreed back in December 2013, and in exchange, Lynch would give Pullman a cut. See United States v. McDonough, 727 F.3d 143, 153 (1st Cir. 2013) ("[M]ost bribery agreements will be oral and informal . . . ." (citation omitted)). This is exactly the quid pro quo the government needed to prove. See United States v. Gracie, 731 F.3d 1, 3 (1st Cir. 2013) ("When a person with the power to do or not

do something demands a payment from the beneficiary of the exercise of that power as a condition for continuing to do so, the payment is not gratuitous.").

We find Pullman's and Lynch's attempts at alternative explanations unconvincing. Pullman explains that he was simply "turning to his friend . . . for money . . . at a time the money was available" to her. Pullman and Lynch also suggest that Lynch's eventual payment to Pullman was merely a "payment made to cultivate a business relationship, express gratitude, or curry favor." But the jurors were not born yesterday. Given the foregoing chronology, they could easily have concluded that Lynch caved to the pressure and agreed to cut Pullman a check to ensure her firm received the money. See Fuentes-Lopez, 994 F.3d at 71.

Pullman and Lynch further argue that Pullman did not need a kickback to make the payment to Lynch Associates; he would have done it anyway, since Lynch Associates' work was just worth that much. But, as we have explained, as matters stood before the $20,000 check was delivered, Lynch had neither the extra payment nor any contractual right to compensation beyond the "fixed" fee to which Lynch Associates had originally agreed. And the issue is not whether Pullman should have paid the money; the issue is whether he did so in exchange for a taste himself. See Gracie, 731 F.3d at 3.

Lynch separately argues that even if the evidence showed that Pullman caused the Union to pay Lynch Associates an extra $150,000 only because they had an agreement that he would receive a cut, this would prove the crime of extortion by fear under the Hobbs Act rather than a quid pro quo. See 18 U.S.C. § 1951(a), (b)(2) (criminalizing the use of extortion to "obstruct[], delay[], or affect[] commerce" and defining extortion as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right"); United States v. Cruzado-Laureano, 404 F.3d 470, 481 (1st Cir. 2005) (explaining that "fear of economic loss" can support a charge of extortion by fear under the Hobbs Act). But the contention that the facts alleged could support one charge is typically no defense to a conviction on another, unless the two crimes are mutually exclusive. See United States v. Facteau, No. 15-cr-10076, 2020 WL 5517573, at *20 (D. Mass. Sept. 14, 2020) (discussing cases where "[c]ourts have determined that convictions are mutually exclusive"). And Lynch cites no authority for her implicit claim that a victim of extortion cannot also be guilty of bribery. Cf. United States v. Buffis, 867 F.3d 230, 235 n.5 (1st Cir. 2017) (rejecting defendant's claim "that proof of bribery cannot be proof of extortion [under color of official right] (and vice-versa)"); Evans v. United States, 504 U.S. 255, 267 n.18 (1992) (noting that

"the modern trend of the federal courts is to hold that bribery and extortion [under color of official right] as used in the Hobbs Act are not mutually exclusive" (cleaned up)).

In sum, we conclude that a jury could reasonably have found the existence of a quid pro quo arrangement between Lynch and Pullman in which Pullman secured an additional $150,000 in compensation for Lynch Associates in exchange for a $20,000 bribe or kickback.[3] And because defendants do not dispute that the evidence was sufficient to show that Pullman owed a fiduciary duty to the Union of which he was president, we can safely reject defendants' challenges to the sufficiency of the evidence to support the conviction under Count II for honest-services wire fraud.

2.

Pullman and Lynch also seek a new trial on their honest-services wire fraud convictions based on asserted flaws in the district court's jury instructions. Specifically, they argue that the district court incorrectly instructed the jury that Pullman owed a fiduciary duty to the Commonwealth, enabling the jury to return a guilty verdict for honest-services wire fraud on a legally erroneous theory. Alternatively, they argue that these same

[3] This conclusion also disposes of defendants' contention that, absent proof of a bribe or kickback, there would have been no evidence of a scheme to defraud.

instructions improperly removed a fact-specific determination from the jury.

We do not reach the merits of either argument. Instead, as we explain below, we find that both asserted errors were harmless beyond a reasonable doubt.

a.

Both challenges concern the requirement that the government prove that Pullman breached his duty of "honest services," often summarized as the common law obligations of fiduciaries. See Skilling, 561 U.S. at 402, 407; Percoco, 598 U.S. at 329–30. At trial, the government had two theories of Pullman's fiduciary obligations: his duties to the Union and the Union members as its president, and his duties to the Commonwealth as an MSP trooper. Pullman and Lynch did not contest the former; however, they maintained throughout trial -- as they do on appeal -- that Pullman was not a fiduciary of the Commonwealth and indeed could not have been while negotiating the DOL grievance on behalf of the Union against the Commonwealth.

At trial, the district court at times insinuated that Pullman's fiduciary obligations were matters of law; at other times it implied that they were matters of fact for the jury to find. On the whole, we agree with the defendants that the court's remarks collectively could be construed as instructing that Pullman owed a fiduciary duty to the Commonwealth "under these circumstances,"

and that the defendants preserved their objections to that instruction. The jury's verdict form did not state whether it found that Pullman breached any fiduciary duty to the Union, the Commonwealth, or both -- only that both defendants were guilty of honest-services wire fraud.

b.

Pullman and Lynch's first challenge to the fiduciary duty instructions described above rests on the Supreme Court's decision in Yates v. United States, 354 U.S. 298 (1957). In Yates, the defendants were convicted of a conspiracy with two objects: first, "to advocate and teach the duty and necessity of overthrowing the Government," and second, "to organize, as the Communist Party of the United States, a society of persons who so advocate and teach." Id. at 300. The Yates Court concluded, however, that the latter conspiratorial purpose fell outside of the relevant statute of limitations, id. at 312, and that the entire conspiracy verdict must therefore be set aside, id. at 311–12. In reaching that conclusion, the Court reasoned that "the trial court's instructions . . . [were] not sufficiently clear or specific to warrant [] drawing the inference that the jury understood it must find an agreement extending to both" objects of the conspiracy. Id. at 311. In this situation, "where the verdict is supportable on one ground, but not on another, and it is impossible to tell which ground the jury selected," the "verdict

[needed] to be set aside." Id. at 312; see Abdelaziz, 68 F.4th at 64–65.

Pullman and Lynch contend that the Yates Court's teaching applies to their conviction for honest-services wire fraud. Their argument proceeds in two parts. First, they argue that the challenged instruction was legal error because Pullman could not have owed a fiduciary duty to the Commonwealth while he negotiated against it. Second, they contend that because the jury could have convicted them on the legally erroneous theory that Pullman owed a fiduciary duty to the Commonwealth, the entire verdict as to honest-services wire fraud must be set aside.

We begin and end with the second step of their argument -- assuming arguendo they are correct as to the first. This is because Yates, which suggested automatic reversal was warranted for errors of its kind, was decided before the Supreme Court acknowledged that some constitutional errors at criminal trials could be harmless. See Chapman v. California, 386 U.S. 18, 22 (1967); see also, e.g., Neder v. United States, 527 U.S. 1, 8–15 (1999) (extending harmless-error review to a jury instruction that erroneously omitted an element of the offense). And the Court has since made clear that harmless-error review applies to Yates challenges, reasoning that there is no logical distinction between instructional errors that omit or misstate elements on one hand, and instructional errors that, as in Yates, "aris[e] in the context

of multiple theories of guilt" on the other. Hedgpeth v. Pulido, 555 U.S. 57, 61 (2008) (per curiam); see also Skilling, 561 U.S. at 414 & n.46 (clarifying that harmless-error review applies to Yates errors on both collateral review and direct appeal).

As a result, we apply harmless-error review to Pullman and Lynch's asserted instructional error. In doing so, "we are required to affirm the conviction," United States v. Wright, 937 F.3d 8, 30 (1st Cir. 2019), if "it appears 'beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained,'" Neder, 527 U.S. at 15 (quoting Chapman, 386 U.S. at 24); see also United States v. Lyons, 740 F.3d 702, 714 (1st Cir. 2014) (stating that Neder applies to a Yates claim on direct review); United States v. Zhen Zhou Wu, 711 F.3d 1, 30 (1st Cir. 2013) (same); United States v. Galecki, 89 F.4th 713, 740–41 (9th Cir. 2023) (applying Neder to a Yates claim on direct review). In Neder, for example, the Supreme Court considered whether the district court's omission of an element of the defendant's tax fraud conviction was harmless beyond a reasonable doubt. 527 U.S. at 15. Emphasizing that the evidence presented at trial showing the omitted element was "so overwhelming" that the defendant did not contest that it was met, the Court concluded that the error was harmless. Id. at 16–17.

The evidence is just as overwhelming here. To prevail, it suffices for the government to prove that Pullman owed and

breached a fiduciary duty to the Union -- not to both the Union and the Commonwealth. See, e.g., Skilling, 561 U.S. at 407 (describing the "solid core" of honest-services fraud cases as involving offenders who violate "a fiduciary duty" (emphasis added)). And there is no dispute that Pullman was the Union president, that he acted as such in handling the DOL matter, and that a union president acting as such in a union matter has obligations that place him well within the core set of relationships contemplated by the Court's interpretation of § 1346. See id. at 407 n.41 (listing the relationship between a union official and union members as an example of an uncontested fiduciary duty in the context of honest-services fraud).

At oral argument, counsel for Pullman seemed to intimate that our harmless-error inquiry should always examine each element of honest-services wire fraud to assess its Nader overwhelmingness. But this argument is unavailing in this case, even were it not waived for being asserted for the first time at oral argument. See United States v. Pizarro-Berrios, 448 F.3d 1, 5 (1st Cir. 2006). Here, the government asserted only "a single kickback scheme," such that the jury must have necessarily found that the $20,000 check to Pullman was a kickback in order to convict both defendants. The government's theory was that this kickback was a breach of Pullman's fiduciary duties, whether to

the Commonwealth or to the Union.[4] And Pullman and Lynch do not dispute that, if Pullman engaged in a kickback scheme using the Union's funds, Pullman necessarily violated his fiduciary duty to the Union. In short, given the overwhelming proof that Pullman acted as president of the Union in providing Lynch with a payment from the Union, and given the jury's necessary finding that the redirection of part of the payment into Pullman's pocket was a kickback, there was no danger that any instructional error caused Pullman's conviction for honest-services wire fraud. Cf. Wright, 937 F.3d at 30 (evaluating harmlessness by examining the evidence as to one of the government's "theor[ies] of guilt" for an element of the crime of conviction).

In sum, beyond any reasonable doubt, Pullman owed a fiduciary duty to the Union, and the existence of that duty fully sufficed to satisfy any requirement that the government prove that his relevant actions in channeling $20,000 from the Union into his own pocket were that of a fiduciary. It therefore made no difference whatsoever that the jurors may have been wrongly told that Pullman was also a fiduciary of the Commonwealth.

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[4] As in Wright, we see no basis for concluding that the government "forced or urged the jury to" adopt the problematic theory of guilt, which here concerned Pullman's violation of a fiduciary duty he owed to the Commonwealth, by substantially emphasizing that theory over the valid theory that Pullman violated a fiduciary duty he owed to the Union. 937 F.3d at 30 (cleaned up). We therefore need not decide how our harmless-error analysis would be affected had the government done so.

c.

Pullman and Lynch also argue they are owed a new trial because the question of whether Pullman owed a fiduciary duty to the Commonwealth should have been left to the jury. See United States v. Argentine, 814 F.2d 783, 788 (1st Cir. 1987) ("Undeniably inherent in the constitutional guarantee of trial by jury is the principle that a court may not step in and direct a finding of contested fact in favor of the prosecution . . . ."). But our holding of harmless error also disposes of this concern, since defendants make no argument that the jury's factfinding role was disturbed as to the question of Pullman's fiduciary duties to the Union. See United States v. Rivera-Santiago, 107 F.3d 960, 965–67 (1st Cir. 1997) (applying harmless-error review to the argument that the district court's answer to a question from the jury removed a factual question from the jury's purview); Argentine, 814 F.2d at 788–90 (same).

3.

As an alternative challenge to her honest-services fraud conviction, Lynch contends that 18 U.S.C. § 1346 is unconstitutionally vague as applied to her. But her challenge poses a question that the Supreme Court has already taken up: whether undisclosed self-dealing can be properly subject to liability under § 1346. See Skilling, 561 U.S. at 409. In Skilling, the Court resolved that question by limiting § 1346 to

encompass only schemes for bribes or kickbacks. Id. at 410–13. And here, Pullman and Lynch were convicted on the theory that they participated in a scheme that involved bribes or kickbacks, a theory that falls well within the limits of the statute as sketched by Skilling. Lynch's challenge to her conviction, therefore, masquerades as constitutional when it in substance takes issue with the sufficiency of the evidence to show a kickback scheme -- an argument we rejected above.

Lynch also argues that Skilling was wrongly decided because it "legislated a new federal law." See 561 U.S. at 415 (Scalia, J., concurring in part and concurring in the judgment) (asserting that the majority should have struck § 1346 down rather than impermissibly rewriting it in order to find it constitutional); see also Percoco, 598 U.S. at 333–38 (Gorsuch, J., concurring in the judgment) (same). But we are bound by the majority decision in Skilling unless and until the Court changes its mind.

For these reasons, we see no merit in Lynch's constitutional challenge to § 1346.[5]

[5] Lynch also contends for the first time on reply that Skilling did not resolve the question of which fiduciary duties can support a conviction under § 1346. But she fails to advance the necessary next step of her argument: that § 1346 did not provide sufficient notice that Pullman's fiduciary duties, as proven by the government, fall within its ambit. As a result, this argument is doubly waived -- for being asserted for the first time on reply, see Sparkle Hill, Inc. v. Interstate Mat Corp., 788

In sum, none of Pullman's or Lynch's challenges to their convictions for honest-services wire fraud succeed. We therefore affirm the district court's denial of their motions for acquittal as to those convictions.

II.

We next turn to the subject of tax fraud. Lynch and Pullman were convicted of two counts each of tax fraud under 26 U.S.C. § 7206(2). Pullman does not challenge his tax fraud convictions on appeal, and we address Lynch's challenges to hers infra. But both challenge their convictions under 18 U.S.C. § 371 for conspiring to, as described in the indictment, "conceal illegal bribes, kickbacks and other payments" for the purpose of defeating Internal Revenue Service (IRS) tax-collection functions -- often referred to as a Klein conspiracy. See Mubayyid, 658 F.3d at 57. See generally United States v. Klein, 247 F.2d 908 (2d Cir. 1957). A Klein conspiracy conviction requires the government to establish beyond a reasonable doubt "both 'an agreement whose purpose was to impede the IRS (the conspiracy),' and the knowing participation of each defendant in that conspiracy."[6] Mubayyid, 658 F.3d at 57

F.3d 25, 29 (1st Cir. 2015), and for underdevelopment, see United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990).

[6] Defendants' tax fraud convictions were charged as the necessary overt acts in furtherance of the Klein agreement, see United States v. Frankhauser, 80 F.3d 641, 653 (1st Cir. 1996), and defendants do not dispute this element of their Klein conspiracy convictions on appeal.

(quoting United States v. Adkinson, 158 F.3d 1147, 1154 (11th Cir. 1998)).

A.

At trial, the evidence of a Klein conspiracy focused on a series of payments from Lynch to Pullman. The first was the $20,000 that Lynch paid to Pullman's wife in connection with the DOL matter, discussed supra. That payment came from a $50,000 owner's draw from Lynch Associates, which Lynch later reclassified in the firm's records as a consulting payment to Pullman's wife. The government also presented evidence of four other payments in sums between $5,000 and $9,000, from Lynch's personal account or Lynch Associates' account, to either Pullman or his wife, in connection with other business dealings. These were each classified in the firm's books as commissions or consulting payments.

Pullman did not report any of the above income on his joint tax returns. At the same time, Lynch Associates did not issue a Form 1099 to Pullman or his wife for any of the payments, despite, when necessary, issuing such forms for payments made to others. Thus, the IRS received no report of these payments from either the payor or the payees.

B.

Pullman and Lynch argue that, while they each may have committed tax fraud, there was insufficient evidence that they

conspired to do so. But "[b]y their very nature, criminal conspiracies are clandestine and inchoate." Id. It is a "well-established legal principle that a conspiracy may be based on a tacit agreement shown from an implicit working relationship." United States v. Patrick, 248 F.3d 11, 20 (1st Cir. 2001), overruled on other grounds by United States v. Salvador-Gutierrez, 128 F.4th 299 (1st Cir. 2025) (en banc). And here, Lynch's repeated non-reporting and Pullman's repeated non-reporting worked in tandem to reduce the risk that a report by either one would have pointed the finger at the other. It is reasonable to infer from this parallel concealment that neither Lynch nor Pullman would have taken the risk of not reporting the payments each year absent some assurance that the other person was also not reporting the payments. And their long history with each other in channeling money to Pullman enhances the plausibility of that inference. For those reasons, the jurors had a basis to regard the tax reporting not as two separate endeavors but as the product of mutual coordination.

As a result, we affirm Pullman's and Lynch's convictions for a Klein conspiracy.

III.

We next turn to Pullman and Lynch's challenge to their convictions for obstruction of the grand jury proceedings. We

first review the evidence for the government's case and then turn to the parties' arguments.

A.

The following evidence was presented at trial. On August 1, 2018, the Union received a grand jury subpoena requesting various financial records.[7] Daly took it as a sign that more would be coming and began to prepare by collecting the Union's expense-reimbursement records. Although he found several years' worth of records quickly, he soon discovered that three years' worth of records were missing. Thinking they were misplaced or lost during a recent office renovation, Daly began a more in-depth search. He also called Pullman to let him know that he couldn't find the records, telling Pullman, "I'm just going to have to tell the government that I lost them or misplaced them in the move." In response, according to Daly's testimony at trial, Pullman asked Daly to lie -- "Can't we just tell them we have an internal policy to destroy them after a year?" And Daly responded, "I don't think that's an option."

Daly had still not found the missing reimbursement records by the time the next subpoena arrived on September 18, 2018. As Daly had predicted, that second subpoena requested, among

[7] This was the second grand jury subpoena to arrive; the first, on July 11, 2018, requested records of the Union's campaign contributions.

other things, expense-reimbursement records, including receipts and debit card records. In response to the subpoena, Pullman provided some receipts from 2018, but records from some previous years were still missing. At that point, Pullman and Daly met to discuss the September 18 subpoena in the Union office, and Pullman again proposed that Daly falsely "tell them that we have an internal policy to keep them for a year and then destroy them[.]" And again, Daly responded, "I don't think we can do that. I think I'd probably get charged with obstruction. I'm just going to have to fall on my sword and say that I lost them." Daly knew it would probably be considered obstruction to do as Pullman suggested because he had researched the question after the first time Pullman brought it up.

Sometime after the Union received the September 18 subpoena, Pullman also called the Union attorney in charge of responding to the subpoenas, Leonard Kesten, and asked Kesten to speak with Lynch. Shortly thereafter, and several days before Pullman resigned as president of the Union, Lynch called Kesten and asked him if he "would delay the production of the documents contained in the subpoena because [Lynch and Pullman] were still looking for receipts." Kesten testified at trial that this request made him "uncomfortable" because he understood it to mean a request for him to "hold off so that [documentation] could be put into the

documents" prior to responding to the subpoena. Kesten refused the request.

On October 17, 2018, Federal Bureau of Investigation (FBI) special agents interviewed Lynch at her home in Hull, Massachusetts. During the interview, the agents reminded Lynch several times that lying to federal agents was a crime. They also asked several times if Lynch had made any payments from her personal account or from Lynch Associates' account to Pullman or his wife. In response, Lynch stated that "she had never made any payments" nor any "loans" to Pullman or his wife. She also stated that she spoke with Pullman recently but had not had any conversations with him about the federal investigation. And she averred that Pullman had mentioned nothing about his or SPAM's expense reports.

B.

Based on the above events, Pullman and Lynch were each charged under the catch-all or "[o]mnibus [c]lause" of 18 U.S.C. § 1503(a), United States v. Aguilar, 515 U.S. 593, 598 (1995), which criminalizes anyone who "corruptly . . . influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice." Both defendants were convicted on one count each for "attempting to manipulate records required to be produced pursuant to a [sic] grand jury subpoenas." In addition, Lynch was convicted of a separate count for "falsely

denying to Special Agents of the FBI and IRS that she ever made any payments to either Pullman or his spouse" and "falsely denying she had ever had any conversations with Pullman about the ongoing grand jury investigation."[8]

1.

We focus first on Pullman and Lynch's convictions for "attempting to manipulate records" in response to the September 18 subpoena, applying de novo review and "evaluating the evidence and all plausible inferences therefrom in the light most favorable to the verdict to determine whether a rational factfinder could conclude beyond a reasonable doubt that [defendants] committed the charged crime." United States v. Pena, 24 F.4th 46, 73 (1st Cir. 2022).

Pullman and Lynch pose two challenges to these convictions. First, they argue that there was insufficient evidence to show their specific intent to obstruct the grand jury investigation beyond a reasonable doubt. Alternatively, they argue that neither Pullman's request to Daly nor Lynch's request to Kesten constituted an "endeavor[]" to obstruct the grand jury proceedings under 18 U.S.C. § 1503(a). We address each in turn.

[8] Pullman and Lynch were each also convicted of aiding and abetting the obstruction of justice under 18 U.S.C. § 2, which merged into the principal convictions at sentencing. On appeal, Pullman and Lynch decline to raise any basis for challenging their aiding and abetting convictions apart from the challenge to the principal convictions.

a.

A conviction under the omnibus clause of § 1503(a) requires that a defendant specifically intend to obstruct the judicial proceeding in question. See, e.g., Aguilar, 515 U.S. at 599.[9] The Supreme Court has emphasized that this element requires a nexus to the judicial proceeding, such that a defendant's actions have the "'natural and probable effect' of interfering with the due administration of justice." Id. (quoting United States v. Wood, 6 F.3d 692, 695 (10th Cir. 1993)). Thus, in Aguilar, the Court overturned a conviction where the defendant lied to an FBI agent knowing of an ongoing grand jury investigation but not that his statements would be provided to the grand jury. Id. at 600-01 ("[W]hat use will be made of false testimony given to an investigating agent who has not been subpoenaed or otherwise directed to appear before the grand jury is . . . speculative.").

Pullman and Lynch first briefly contend that Pullman's request to Daly that the Union fabricate a document destruction policy in response to the September 18 subpoena does not show his intent to obstruct beyond a reasonable doubt. So, too, at oral argument, counsel for Pullman suggested that we should interpret Pullman's question to Daly as an inquiry about what would be

[9] The parties do not contest the other two elements of their obstruction convictions; namely, that there was a pending judicial proceeding and that defendants had notice of that proceeding. See United States v. Acevedo, 882 F.3d 251, 257 (1st Cir. 2018).

proper, not an invitation to lie. But Pullman had no need to inquire as to whether lying to a grand jury was wrong. Jurors could therefore easily construe the twice-made inquiry as a proposal to lie rather than an inquiry about what was proper. And unlike in Aguilar, here the relationship to the grand jury was clear: Daly's testimony was that Pullman's proposal was a direct and knowing response to a grand jury subpoena. As such, the jury could have reasonably found that Pullman had the specific intent necessary to convict him of obstruction.

The evidence to show Lynch's intent to obstruct is a different matter. At trial, the only evidence as to her intent to obstruct the production of documents was testimony about her phone call to the Union attorney Kesten, in which she asked him to "delay the production of the documents contained in the subpoena because [defendants] were still looking for receipts" and told him "that she was going to assist [Pullman] in getting his receipts." Without evidence that Lynch knew what was in the records or why Pullman wanted more time, her request to delay production in order to help Pullman find receipts is not itself nefarious -- especially in light of an FBI agent's testimony that rolling productions were not uncommon and Kesten's testimony that other Union officials were in the process of gathering documents in response to the subpoena. Moreover, the subpoena itself asks only for "[e]xpense reimbursement records including requests, supporting documents,

receipts and proofs of purchases"; it does not distinguish between records kept in the ordinary course of business and records Pullman may have kept elsewhere, despite the fact that Kesten interpreted it to do so. We therefore conclude that a reasonable jury could not have found beyond a reasonable doubt that Lynch had the requisite intent to obstruct the grand jury.

b.

Pullman launches one more challenge to his obstruction conviction, arguing that, even if he intended to manipulate records in response to the subpoena, his actions did not rise to the level of an "endeavor." See 18 U.S.C. § 1503(a) (prohibiting any "corrupt[] . . . endeavor[] to influence, obstruct, or impede, the due administration of justice"). Specifically, he argues that he did not exert any "pressure or follow-up" on Daly when he refused Pullman's requests to fabricate a document destruction policy.[10]

But Pullman mischaracterizes the meaning of "endeavor." In Aguilar, the Supreme Court emphasized that a defendant need not be successful in the obstruction of justice to be convicted under the omnibus clause of § 1503(a); where a "defendant acts with an intent to obstruct justice, and in a manner that is likely to

[10] Pullman also makes the same lack-of-pressure argument about Lynch's call to Kesten. But because we have already concluded there was insufficient evidence to support Lynch's conviction for obstruction based on that call, we focus here on the evidence that Pullman asked Daly to lie.

obstruct justice, but is foiled in some way," they have "endeavor[ed]" to obstruct justice. 515 U.S. at 601–02. And we have repeatedly held that an "endeavor[]" under § 1503(a) need not rise to the level of criminal attempt. See United States v. Tedesco, 635 F.2d 902, 907 (1st Cir. 1980); United States v. Lazzerini, 611 F.2d 940, 941 (1st Cir. 1979). Thus, contrary to Pullman's argument, the requirement that a defendant "endeavor[]" to obstruct justice does not mandate a greater degree of effort or persistence.

Pullman also asks us to infer a repetition requirement from our decision in Tedesco, where the defendant had suggested a grand jury witness change his testimony in at least three separate conversations. See 635 F.2d at 903–04. But there, we trained our focus on rejecting the defendant's contention that he could not be convicted of obstruction where his efforts were not explicit, and nowhere did we suggest that the number of efforts was dispositive. Id. at 906–07. While repetition may be relevant in distinguishing musings from actual endeavors, it is not always required to support a finding of an endeavor. See United States v. Acevedo, 882 F.3d 251, 256–57, 259–60 (1st Cir. 2018) (upholding a conviction under § 1503(a) where defendant once requested that a cooperating witness "retract" his account); see also United States v. Roe, 529 F.2d 629, 631 (4th Cir. 1975) (same where defendant spoke on the phone once to a juror's husband); United States v. Russell, 255

U.S. 138, 141–42 (1921) (upholding a conviction under § 1503(a)'s predecessor statute where defendant spoke on the phone once to a juror's wife).

The pivotal inquiry as framed in Aguilar is foreseeability. See 515 U.S. at 599 (holding that a defendant "endeavor[s]" by taking actions with the "'natural and probable effect' of interfering with the due administration of justice" (quoting Wood, 6 F.3d at 695)). And here, where the government's case was that Pullman -- the president of the Union -- point blank asked the Union's secretary to lie to the grand jury, we think it clear that fabrication was foreseeable. This holds true regardless of whether Daly did or did not resist the clear request.[11] As such, we hold that the jury could have fairly understood both actions as "endeavor[s]" under Aguilar and § 1503(a).

In sum, although we reverse Lynch's conviction for attempting to manipulate records in response to a subpoena, Pullman's conviction for the same was proper where the evidence was sufficient to show he "act[ed] with an intent to obstruct justice, and in a manner that [was] likely to obstruct justice, but [was] foiled." See id. at 601.

[11] As Pullman points out, the first time he asked Daly to lie was in response to the August 1 subpoena request, an incident that is out of the timeframe of the indictment. But the second, repeated request falls within the timeframe.

2.

Lynch was also convicted on a separate charge of obstruction under § 1503(a) for lying to FBI agents during the interview at her home in 2018. Her only challenge to this conviction on appeal is an assertion of another Yates error: that she is owed a new trial because the jury was improperly instructed on honest-services fraud and wire fraud and therefore "relied on unsound fraud theories . . . to reach a verdict on" the obstruction charge.

Lynch did not make this argument before the district court, so it is subject only to review for plain error. See United States v. Rodríguez-Santos, 56 F.4th 206, 218–19 (1st Cir. 2022). But in her briefs to us, Lynch proffers no plain-error analysis, thereby waiving her argument altogether. See United States v. Rathbun, 98 F.4th 40, 58 (1st Cir. 2024) ("[B]ecause [defendant] does not acknowledge his failure to preserve his objection below or provide us with a plain error analysis of his . . . argument in his opening brief, the argument is waived, and we need say no more."); see also United States v. Rodriguez-Monserrate, 22 F.4th 35, 40 (1st Cir. 2021) (treating an argument of procedural error at a criminal trial that failed to articulate its status on plain-error review as waived); United States v. Pabon, 819 F.3d 26, 33 (1st Cir. 2016) ("Pabon has waived these challenges because he has

not even attempted to meet his four-part burden for forfeited claims . . . .").[12]

As a result, we affirm her second conviction under § 1503(a).

IV.

With the bulk of Pullman's and Lynch's convictions behind us, we can now turn to the low-hanging fruit.

A.

Separately from the honest-services wire fraud convictions for the DOL grievance payment, Pullman and Lynch were also convicted of three counts each of wire fraud under 18 U.S.C. § 1343. These convictions were based on payments Lynch made to Pullman after Pullman helped Lynch Associates secure contracts with two companies vying for the Union's support.

Pullman and Lynch challenge the sufficiency of the evidence for their wire fraud convictions. Alternatively, they contend a new trial is warranted on the basis of an error of jury instruction. However, we need not reach either of these arguments. Although the government defended these convictions below, on appeal, it concedes that judgments of acquittal should be entered for all counts of wire fraud "[i]n light of the manner in which

[12] Lynch makes this same Yates argument with respect to her convictions for tax fraud. These arguments are both forfeited and waived for the same reasons as her argument concerning her second § 1503(a) conviction.

the evidence developed at trial and post-trial developments in the law." Following the government's lead, we reverse these convictions.

The government also concedes acquittal is warranted for Count D, one of Lynch's tax fraud convictions related to the above-mentioned counts of wire fraud. We therefore also reverse Lynch's conviction on this count.

B.

Finally, Pullman and Lynch challenge their Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy convictions, which are based on events already described. See 18 U.S.C. § 1962(d). Both defendants were charged with "conduct[ing] and participat[ing] . . . [in] a pattern of racketeering activity" consisting of the predicate acts of honest-services wire fraud, wire fraud, and obstruction of justice. See id. § 1961(5) (defining a pattern of racketeering activity to include "at least two acts of racketeering activity"); id. § 1961(1) (defining acts of racketeering activity to include wire fraud and obstruction of justice). Pullman and Lynch's sole argument is that their RICO charges fail because "the evidence failed to establish that [their] conduct constituted wire fraud or obstruction." But this contention gets them nowhere: Even putting aside the wire fraud convictions that the government concedes should be overturned, we

have already held that the evidence supports the obstruction and honest-services wire fraud verdicts.[13]

As a result, Pullman and Lynch's challenge to their RICO conspiracy convictions fails.

V.

For the reasons stated, we **reverse** Pullman's and Lynch's wire fraud convictions under Counts III–V; Lynch's obstruction of justice conviction under Count VIII; and Lynch's tax fraud conviction under Count D. We **affirm** defendants' other convictions. The case is **remanded** to the district court for resentencing in light of this decision.

So ordered.

[13] Pullman and Lynch raise no argument that the obstruction and honest-services wire fraud convictions are not related or that they do not threaten continued criminality, requirements for predicate acts to support a RICO conviction. See H.J. Inc. v. Nw. Bell Tel. Co., 492 U.S. 229, 239–40 (1989) (holding that two or more predicate acts become a pattern of racketeering activity under RICO only when they are both "related, and . . . amount to or pose a threat of continued criminal activity"). As a result, we do not address these issues.

United States Court of Appeals
For the First Circuit

No. 23-1510

UNITED STATES OF AMERICA,

Appellee,

v.

ANNE M. LYNCH,

Defendant, Appellant.

JUDGMENT

Entered: June 2, 2025

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: Anne M. Lynch's wire fraud convictions under Counts III–V, obstruction of justice conviction under Count VIII, and tax fraud conviction under Count D are reversed, the other convictions are affirmed, and the case is remanded to the district court for resentencing consistent with the opinion issued this day.

By the Court:

Anastasia Dubrovsky, Clerk

cc: Hon. Douglas P. Woodlock, Robert Farrell, Clerk, United States District Court for the District of Massachusetts, Scott Patrick Lopez, Donald Campbell Lockhart, Neil J. Gallagher Jr., Kristina E. Barclay, Alexia R. De Vincentis, Anne M. Lynch

United States Court of Appeals
For the First Circuit

No. 23-1510

UNITED STATES,

Appellee,

v.

ANNE M. LYNCH,

Defendant, Appellant.

Before

Barron, Chief Judge,
Kayatta and Aframe, Circuit Judges.

ORDER OF COURT

Entered: July 22, 2025

Appellant Anne M. Lynch's petition for rehearing is denied.

By the Court:

Anastasia Dubrovsky, Clerk

cc:
Scott Patrick Lopez
Donald Campbell Lockhart
Neil J. Gallagher Jr.
Kristina E. Barclay
Alexia R. De Vincentis

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part IV. Jurisdiction and Venue (Refs & Annos)
Chapter 81. Supreme Court (Refs & Annos)

28 U.S.C.A. § 1254

§ 1254. Courts of appeals; certiorari; certified questions

Currentness

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 928; Pub.L. 100-352, § 2(a), (b), June 27, 1988, 102 Stat. 662.)

Notes of Decisions (519)

28 U.S.C.A. § 1254, 28 USCA § 1254
Current through P.L. 118-49. Some statute sections may be more current, see credits for details.

End of Document

Appendix C.1

United States Code Annotated
Constitution of the United States
Annotated
Amendment V. Grand Jury; Double Jeopardy; Self-Incrimination; Due Process; Takings

U.S.C.A. Const. Amend. V

Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Takings without Just Compensation

Currentness

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

<Historical notes and references are included in the full text document for this amendment.>

<For Notes of Decisions, see separate documents for clauses of this amendment:>

<USCA Const. Amend. V--Grand Jury clause>

<USCA Const. Amend. V--Double Jeopardy clause>

<USCA Const. Amend. V--Self-Incrimination clause>

<USCA Const. Amend. V-- Due Process clause>

<USCA Const. Amend. V--Takings clause>

U.S.C.A. Const. Amend. V, USCA CONST Amend. V
Current through P.L. 119-36. Some statute sections may be more current, see credits for details.

End of Document

Appendix D.1

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 63. Mail Fraud and Other Fraud Offenses (Refs & Annos)

18 U.S.C.A. § 1343

§ 1343. Fraud by wire, radio, or television

Currentness

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both.

CREDIT(S)

(Added July 16, 1952, c. 879, § 18(a), 66 Stat. 722; amended July 11, 1956, c. 561, 70 Stat. 523; Pub.L. 101-73, Title IX, § 961(j), Aug. 9, 1989, 103 Stat. 500; Pub.L. 101-647, Title XXV, § 2504(i), Nov. 29, 1990, 104 Stat. 4861; Pub.L. 103-322, Title XXXIII, § 330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub.L. 107-204, Title IX, § 903(b), July 30, 2002, 116 Stat. 805; Pub.L. 110-179, § 3, Jan. 7, 2008, 121 Stat. 2557.)

Notes of Decisions (1627)

O'CONNOR'S COMMENTS

United States Sentencing Guidelines
§2B1.1 (basic economic offenses)

§2C1.1 (offenses involving public officials & violations of federal election campaign laws)

18 U.S.C.A. § 1343, 18 USCA § 1343
Current through P.L. 119-36. Some statute sections may be more current, see credits for details.

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 63. Mail Fraud and Other Fraud Offenses (Refs & Annos)

18 U.S.C.A. § 1346

§ 1346. Definition of "scheme or artifice to defraud"

Currentness

For 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.

CREDIT(S)

(Added Pub.L. 100-690, Title VII, § 7603(a), Nov. 18, 1988, 102 Stat. 4508.)

Notes of Decisions (240)

18 U.S.C.A. § 1346, 18 USCA § 1346
Current through P.L. 119-36. Some statute sections may be more current, see credits for details.

End of Document

Appendix F.1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, v. (1) DANA A. PULLMAN and (2) ANNE M. LYNCH, Defendants.	Criminal No. 19-10345-DPW Violations: Count I: Racketeering Conspiracy (18 U.S.C. § 1962(d)) Count II: Honest Services Wire Fraud (18 U.S.C. §§ 1343 and 1346) Counts III- VII: Wire Fraud (18 U.S.C. § 1343) Count VIII: Obstruction of Justice; Aiding and Abetting (18 U.S.C. §§ 1503(a) and 2) Count IX: Obstruction of Justice (18 U.S.C. § 1503(a)) Count X: Conspiracy to Defraud the United States (18 U.S.C. § 371) Counts A-D: Aiding and Assisting the Filing of a False Tax Return (26 U.S.C. § 7206(2))

INDICTMENT

At all times relevant to this Indictment:

General Allegations

The State Police Association of Massachusetts

1. The State Police Association of Massachusetts ("SPAM") was an association consisting of more than 1,500 Troopers and Sergeants from the Massachusetts State Police

("MSP"). SPAM had its principal offices at 11 Beacon Street, Suite 700, Boston, Massachusetts. SPAM acted as the exclusive bargaining agent between its members ("the Membership") and the Commonwealth of Massachusetts ("the Commonwealth") regarding the terms and conditions of the Membership's employment. SPAM constituted an "enterprise" as defined by Title 18, United States Code, Section 1961(4), that is, a legal entity that engaged in, and whose activities affected, interstate commerce.

2. SPAM had four Constitutional Officers: President, Vice President, Treasurer and Secretary. The President and Treasurer of SPAM held those positions full-time. Under the terms of SPAM's By-Laws, the President had "general supervision over the affairs of the Association." Upon election, the President and Treasurer held office for two-year terms.

3. The President of SPAM also served as the Chairman of the Executive Board ("E-Board"). The E-Board consisted of the four Constitutional Officers and approximately eleven representatives of the various troops of the MSP ("Troop Reps"). Upon election, the Troop Reps held office for one-year terms.

SPAM's Finances

4. SPAM's primary source of income was the dues the Membership paid to SPAM. Upon graduation from the MSP Academy, the vast majority of new MSP troopers became members of SPAM and paid dues to SPAM through automatic deductions from their paychecks.

5. Among the more significant expenses that SPAM incurred and reported to the Membership were the salaries it paid to the E-Board members and professional fees paid to attorneys and a lobbying firm pursuant to retainer agreements.

6. In addition to their regular MSP salary, SPAM paid each Constitutional Officer and Troop Rep a SPAM salary and a $1,000 quarterly stipend. Members of the E-Board could also receive reimbursement checks for SPAM related expenses such as meals, travel, and mileage for the use of their personal vehicles for SPAM business by submitting expense reports, often called "rip sheets," to SPAM's Treasurer. In addition to expense reimbursements, the President and Treasurer each had a SPAM debit card, linked to a SPAM bank account, for SPAM related travel and business.

7. Each year, a local accounting firm ("the CPA Firm") audited SPAM's finances. At the close of each calendar year, the CPA Firm presented audited financial statements to the E-Board for their signature and approval. Thereafter, at the beginning of each following year, the CPA Firm presented condensed versions of the audited financial statements to the Membership at SPAM's annual meeting.

SPAM's Board

8. The E-Board met twice a month and maintained records of their meetings, votes and decisions through minutes prepared by the Secretary. According to SPAM's By-Laws, the E-Board had "the entire charge, control and management of the SPAM, including its business, property and affairs[.]" Furthermore, under its By-Laws, at all meetings of the SPAM Membership and of the E-Board, only "a majority of the Association members in good standing of each body present and voting [had] the power to transact business and to determine the disposition of any matter properly presented at such meeting[.]"

9. While not specifically required under SPAM's By-Laws, it was the regular practice and expectation of the E-Board to consider, vote on, and approve significant expenditures of SPAM funds outside normal and expected operational costs. Expenditures that were routinely presented to and voted on by the E-Board included charitable donations over approximately $500.

10. In addition to bi-monthly E-Board meetings, SPAM also held an annual meeting of the Membership in January at a hotel in Framingham, Massachusetts. The annual meetings included presentations from SPAM's Constitutional Officers, the CPA Firm regarding SPAM's financial position as compared to the previous year along with condensed financial statements of revenue and expenses, and a lobbying firm regarding legislation and other issues affecting the Membership.

SPAM's Lobbying Firm

11. Lynch Associates, Inc. was a lobbying and public relations firm based in Boston, Massachusetts. Since approximately 2008, Lynch Associates, Inc. represented SPAM before government agencies and legislative committees and advocated regarding issues and state legislation on SPAM's behalf. SPAM paid Lynch Associates, Inc. a monthly retainer fee of

approximately $7,000 for lobbying work. Beginning in approximately 2016, SPAM paid Lynch Associates, Inc. an additional $2,500 per month for public relations work.

12. Lynch Associates, Inc. was an S-Corporation ("S-Corp") under the Internal Revenue Code. As an S-Corp, Lynch Associates, Inc. was not required to pay any federal income taxes. Instead, taxable income passed through Lynch Associates, Inc. to its individual shareholders, documented on an Internal Revenue Service ("IRS") Schedule K-1 ("K-1"). Any individual taxpayer who received a K-1 from Lynch Associates, Inc. was required to accurately report the income from the K-1 on their U.S. Individual Tax Return, IRS Form 1040.

13. After the close of each fiscal year, Lynch Associates, Inc. was also required to file a U.S. Income Tax Return for an S-Corp., IRS Form 1120S with the IRS.

The Defendants

14. Defendant DANA A. PULLMAN ("PULLMAN") first joined the MSP as a trooper in approximately 1987 and was the President of SPAM from approximately 2012 until on or about September 28, 2018. Prior to becoming President, from approximately 2008 until 2012, PULLMAN was SPAM's Treasurer. As a law enforcement officer and the President of SPAM, PULLMAN owed a fiduciary duty and a duty of honest services to SPAM, the Membership, and the Commonwealth to perform his job and official duties free from fraud, deceit, and self-enrichment and to refrain from accepting, or agreeing to accept bribes and kickbacks.

15. Beginning in at least 2015 and continuing through at least 2017, PULLMAN and his spouse filed joint federal income tax returns (IRS Form 1040) with the IRS. For each of the tax years for which he filed a joint federal income tax return with the IRS, including the tax years

2014 and 2016, PULLMAN declared under penalty of perjury, that the information submitted in each of the tax returns was true, correct and complete.

16. Defendant ANNE M. LYNCH ("LYNCH") founded Lynch Associates, Inc. in approximately 2001 and until approximately October 2016 was its principal owner. LYNCH was a long-time friend of PULLMAN and often coordinated fundraisers for political candidates supportive of the MSP for SPAM. Following her retirement from Lynch Associates, Inc. effective as of approximately October 2016, LYNCH sold the business to two family members, but continued to work for Lynch Associates, Inc. as a paid consultant, including performing work for SPAM.

17. For the tax years 2013 through 2016, Lynch Associates, Inc. filed IRS Forms 1120S. As to the IRS Forms 1120S filed for tax year 2015, LYNCH declared on behalf of Lynch Associates, Inc., under penalty of perjury, that the information submitted in each of the tax returns was true, correct and complete.

18. Beginning in at least 2015, LYNCH filed individual federal income tax returns with the IRS. For each of the tax years for which she filed an individual federal income tax return with the IRS, including the tax year 2015, LYNCH declared under penalty of perjury, that the information submitted in each of the tax returns was true, correct and complete.

Other Entities

19. Mark43 was a company based in New York that developed, marketed and sold computer software products to law enforcement agencies.

20. Taser International, Inc. was a company based in Arizona that marketed and sold smart weapons to law enforcement agencies.

COUNT I
Racketeering Conspiracy
(18 U.S.C. § 1962(d))

The Grand Jury charges:

21. The Grand Jury re-alleges and incorporates by reference paragraphs 1 through 20 of this Indictment.

22. From in or about 2012 through in or about September 28, 2018, in the District of Massachusetts, and elsewhere, the defendants,

DANA A. PULLMAN and
ANNE M. LYNCH,

and others known and unknown to the grand jury, being persons employed by and associated with SPAM, which enterprise engaged in, and the activities of which affected interstate commerce, knowingly and intentionally conspired to violate Title 18, United States Code, Section 1962(c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity, as defined in Title 18, United States Code, Sections 1961(1) and (5); consisting of multiple acts indictable under Title 18, United States Code, Section 1343 (relating to wire fraud), Title 18, United States Code, Section 1343 and 1346 (relating to honest services wire fraud), and Title 18, United States Code, Section 1503 (relating to obstruction of justice).

23. It was part of the conspiracy that each defendant agreed that a conspirator would commit at least two acts of racketeering activity in the conduct of the affairs of the enterprise.

Purposes of the Conspiracy

24. The principal purposes of the racketeering conspiracy were:

a. To personally enrich PULLMAN, LYNCH and Lynch Associates, Inc., and deprive SPAM, the Membership and the Commonwealth of their right to honest services from PULLMAN, through fraud and deceit including PULLMAN's receipt of illegal bribes and kickbacks from LYNCH and Lynch Associates, Inc.;

b. To fraudulently obtain money and property from SPAM, the Membership, the Commonwealth, and Mark43 and Taser International, Inc., by concealing the payment of bribes and kickbacks from LYNCH and Lynch Associates, Inc. to PULLMAN; and

c. To obstruct and impede the federal grand jury's investigation of SPAM.

All in violation of Title 18, United States Code, Section 1962(d).

COUNT II
Honest Services Wire Fraud
(18 U.S.C. §§ 1343 and 1346)

25. The Grand Jury re-alleges and incorporates by reference paragraphs 1 through 20 of this Indictment.

26. On or about November 12, 2014, in the District of Massachusetts, and elsewhere, the defendants,

DANA A. PULLMAN and
ANNE M. LYNCH,

having devised and intending to devise a scheme and artifice to defraud and to deprive SPAM, the Membership and the Commonwealth of their right of honest services of PULLMAN through bribes and kickbacks, and by means of materially false and fraudulent pretenses, did transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing the scheme to defraud, to wit: the deposit of a $20,000 personal check from LYNCH payable to PULLMAN's spouse, together with associated notices, account updates and acknowledgements.

All in violation of Title 18, United States Code, Section 1343 and 1346.

COUNT III
Wire Fraud
(18 U.S.C. § 1343)

27. The Grand Jury re-alleges and incorporates by reference paragraphs 1 through 20 of this Indictment.

28. On or about September 14, 2014, in the District of Massachusetts, and elsewhere, the defendants,

DANA A. PULLMAN and
ANNE M. LYNCH,

having devised and intending to devise a scheme and artifice to defraud and for obtaining money and property from Mark43 by means of materially false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing the scheme to defraud, to wit: the wire transfer of $20,000 from Mark43's account to Lynch Associates, Inc.'s account, together with associated notices, account updates and acknowledgements.

All in violation of Title 18, United States Code, Section 1343.

COUNTS IV - V
Wire Fraud
(18 U.S.C. § 1343)

29. The Grand Jury re-alleges and incorporates by reference paragraphs 1 through 20 of this Indictment.

30. On or about the dates set forth below, in the District of Massachusetts, and elsewhere, the defendants,

DANA A. PULLMAN and
ANNE M. LYNCH,

having devised and intending to devise a scheme and artifice to defraud and for obtaining money and property from Taser International, Inc. by means of materially false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing the scheme to defraud, as set forth below:

Count	Approximate Date	Description
IV	February 11, 2016	Text message to PULLMAN at phone number (***) ***-6696 at approximately 5:26 p.m.
V	February 22, 2016	Deposit of Check No. 3646, in the amount of $5,000 and drawn on LYNCH's account into PULLMAN's joint account, together with associated notices, account updates and acknowledgements.

All in violation of Title 18, United States Code, Section 1343.

COUNTS VI - VII
Wire Fraud
(18 U.S.C. § 1343)

31. The Grand Jury re-alleges and incorporates by reference paragraphs 1 through 20 of this Indictment.

32. On or about the dates set forth below, in the District of Massachusetts, and elsewhere, the defendant,

DANA A. PULLMAN,

having devised and intending to devise a scheme and artifice to defraud and for obtaining money and property from SPAM and the Membership by means of materially false and fraudulent pretenses, representations, and promises, did transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing the scheme to defraud, as set forth below:

Count	Approximate Date	Description
VI	October 18, 2016	Payment of approximately $468 at Marea restaurant in New York, NY using debit card number **********0627 issued by Eastern Bank for SPAM account number *5288, together with associated notices, account updates and acknowledgements.
VII	March 1, 2017	Payment of approximately $2,113.70 at the Palms Hotel, Miami Beach, FL using debit card number **********0627 issued by Eastern Bank for SPAM account number *5288, together with associated notices, account updates and acknowledgements.

All in violation of Title 18, United States Code, Section 1343.

COUNT VIII
Obstruction of Justice; Aiding and Abetting
(18 U.S.C. §§ 1503(a) and 2)

33. The Grand Jury re-alleges and incorporates by reference paragraphs 1 through 20 of this Indictment.

34. In or about and between September 2018 and October 2018, in the District of Massachusetts and elsewhere, the defendants,

DANA A. PULLMAN and
ANNE M. LYNCH,

did corruptly influence, obstruct and impede, and endeavor to influence, obstruct and impede the due administration of justice in the grand jury investigation of SPAM and others by, among other things, attempting to manipulate records required to be produced pursuant to a grand jury subpoenas.

All in violation of Title 18, United States Code, Sections 1503(a) and 2.

COUNT IX
Obstruction of Justice
(18 U.S.C. § 1503(a))

35. The Grand Jury re-alleges and incorporates by reference paragraphs 1 through 20 of this Indictment.

36. On or about October 17, 2018, in the District of Massachusetts and elsewhere, the defendant,

ANNE M. LYNCH,

did corruptly influence, obstruct and impede, and endeavor to influence, obstruct and impede the due administration of justice in the grand jury investigation of SPAM and others by, among other things, falsely denying to Special Agents of the FBI and IRS that she ever made any payments to either PULLMAN or his spouse from LYNCH's personal account or from Lynch Associates, Inc.'s business account and by falsely denying she had ever had any conversations with PULLMAN about the ongoing grand jury investigation.

All in violation of Title 18, United States Code, Section 1503(a).

COUNT X
Conspiracy to Defraud the United States
(18 U.S.C. § 371)

37. The Grand Jury re-alleges and incorporates by reference paragraphs 1 through 20 of this Indictment.

38. From at least in or about August 2014 through in or about September 2018, in the District of Massachusetts and elsewhere, the defendants,

DANA A. PULLMAN and
ANNE M. LYNCH,

did conspire with each other and others known and unknown to the Grand Jury to defraud the United States for the purpose of impeding, impairing, obstructing, and defeating the lawful government functions of the U.S. Treasury Department and the IRS in the ascertainment, computation, assessment, and collection of revenue: to wit, federal income taxes.

Objective of the Conspiracy

39. The principal purpose of the conspiracy was to conceal illegal bribes, kickbacks and other payments from LYNCH and Lynch Associates, Inc. to PULLMAN in a manner designed to avoid reporting and paying the taxes due and owing on that income to the IRS.

All in violation of Title 18, United States Code, Section 371.

COUNTS A and B
Aiding and Assisting the Filing of a False Tax Return
(26 U.S.C. § 7206(2))

40. The Grand Jury re-alleges and incorporates by reference paragraphs 1 through 20 of this Indictment.

41. On or about the dates set forth below, in the District of Massachusetts, and elsewhere, the defendant,

DANA A. PULLMAN,

did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation to the Internal Revenue Service, of joint U.S. Individual Income Tax Returns, Forms 1040, of defendant PULLMAN and his spouse, for the calendar years specified below. The tax returns were false and fraudulent as to material matters, in that the said returns, among other false items, understated other income and total income, as further specified below; whereas, as defendant PULLMAN then and there knew, he received materially more other income and total income, than defendant PULLMAN caused to be disclosed and reported on Forms 1040:

Count	Tax Return	Tax Period	Date Filed (Approx.)	False Item(s)
A	Form 1040	2014	March 9, 2015	a. Line 21: other income, $0 b. Line 22: total income, $194,990
B	Form 1040	2016	March 1, 2017	a. Line 21: other income, $0 b. Line 22: total income, $200,589

All in violation of Title 26, United States Code, Section 7206(2).

COUNTS C and D
Aiding and Assisting the Filing of a False Tax Return
(26 U.S.C. § 7206(2))

42. The Grand Jury re-alleges and incorporates by reference paragraphs 1 through 20 of this Indictment.

43. On or about the dates set forth below, in the District of Massachusetts, and elsewhere, the defendant,

ANNE M. LYNCH,

did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation to the Internal Revenue Service, of U.S. Income Tax Returns for an S Corporation, Forms 1120S, of Lynch Associates, Inc., for the tax years specified below. The tax returns were false and fraudulent as to material matters, in that the said returns, among other false items, overstated Lynch Associates, Inc.'s expenses and deductions, and understated its ordinary business income as further specified below, whereas, as defendant LYNCH then and there knew, Lynch Associates, Inc. had materially less expenses and deductions, and more ordinary business income than was reported on Forms 1120S:

Count	Tax Return	Tax Period	Date Filed (Approx.)	False Item(s)
C	Form 1120S	October 1, 2014 – September 30, 2015	December 15, 2015	a. Line 20: total deductions, $1,435,998 b. Line 21: ordinary business income (loss), $68,636
D	Form 1120S	October 1, 2015 – September 30, 2016	December 15, 2016	a. Line 20: total deductions, $1,387,800 b. Line 21: ordinary business income (loss), $61,849

All in violation of Title 26, United States Code, Section 7206(2).

COUNT II
Honest Services Wire Fraud
(18 U.S.C. §§ 1343 and 1346)

Honest services wire fraud as charged in Count II is comprised of two statutes; it builds first on the wire fraud statute, 18 U.S.C. § 1343, which we have already discussed in connection with Counts III through VIII. The second relevant statute for honest services wire fraud is Section 1346 of Title 18 of the United States Code, which defines the term "scheme to defraud," as set forth in the wire fraud statute more particularly to include a **"scheme to deprive another of the intangible right of honest services."** Taken together, the wire fraud statute and this honest services fraud statute constitute the offense of honest services wire fraud.

The elements of this crime as charged here are as follows:

First, the defendant under consideration knowingly devised or participated in a scheme to defraud the membership of SPAM and the Commonwealth of Massachusetts of the intangible right to the honest services in breach of Mr. Pullman's fiduciary duties to SPAM and to the Commonwealth of Massachusetts through a bribe or a kickback;

Second, the defendant under consideration knowingly and willfully participated in this scheme with the intent to defraud;

Third, that the scheme to defraud involved the misrepresentation or concealment of a material fact or matter, or the omission of a material fact or matter, or the scheme involved a false statement, assertion, half-truth, or knowing concealment concerning a material fact or matter; and

Fourth, that for the purpose of executing the scheme or in furtherance of the scheme, the defendant caused an interstate wire communication to be used, or it was reasonably foreseeable that for the purpose of executing the scheme or in furtherance of the scheme, an interstate wire communication would be used, on or about the date alleged, that is on or about November 12, 2014.

The first element of honest services wire fraud, as charged in this case, is that the defendant knowingly devised or participated in a scheme to defraud the membership of SPAM and the Commonwealth of Massachusetts of the right to the honest services in breach of Mr. Pullman's fiduciary duties to SPAM and the Commonwealth of Massachusetts through a bribe or a kickback.

A **"scheme"** is any plan or course of action formed with the intent to accomplish some purpose. Thus, to find the defendant guilty of this offense as charged, you must find the defendant under consideration devised or participated in a plan or course of action involving a bribe or a kickback given or offered to Mr. Pullman by Ms. Lynch and offered or given by Ms. Lynch to Mr. Pullman as alleged in the Indictment.

A **"bribe"** is a *quid pro quo*, the giving or receipt of something of value in exchange for something of value for an official act. To find bribery in this context requires you to find that the alleged payor, here alleged to be Ms. Lynch, provided a benefit to Mr. Pullman, as a union official and a state police Trooper, intending that Mr. Pullman would take a favorable official act. You must also find that Mr. Pullman accepted the benefit, intending in exchange to take the official act to benefit the Ms. Lynch.

The choice to accept and offer the bribe in exchange for the official act must precede or be contemporaneous with the exchange. It can't be an after-thought like some gift or gratuity for past services; I must emphasize that the choice to accept and the choice to offer both precede the exchange transaction.

A **"kickback,"** as charged in this case involves an alleged transaction that to some degree overlaps but is not entirely the same as a bribe. A kickback scheme occurs when an individual steers work to a particular company in return for the company paying that individual something of value without the approval of those who bear ultimate approval authority at either the labor union SPAM or the Commonwealth of Massachusetts as a public employer. As presented by the Government in this case, the allegations are of a classic kickback scheme in which two things are involved. First the use of money or compensation of any kind that is provided by a contractor like Lynch to a union employee or public employee like Mr. Pullman to obtain or ultimately reward him for favorable treatment in connection with the contract. This means that such an official used his position to secure contracts for a business owned by an acquaintance in exchange for a share of the proceeds.

By failing fairly, honestly, and candidly to award contracts, such a union or public employee has defrauded those for whom he owes a fiduciary duty characterized as the right to that employee's honest services.

In this context, a **"fiduciary duty"** for the purposes of the honest services fraud statute encompasses any trusting relationship in which one party acts for the benefit of another and induces the trusting party to relax the care and vigilance which such a trusting party would ordinarily exercise. A union official typically owes a fiduciary duty to the union and its members and a public employee owes a fiduciary duty to his public employer. This fiduciary duty is a

duty to act only for the benefit of the union's members and/or the public employer, and not for the union official's or the public employee's own enrichment or benefit. When a union official or public employee devises or participates in a bribery or kickback scheme, that person violates his union members or employer's right to his honest services. This is because the person outwardly purports to be working solely for the union or the public employer, but instead has received benefits from a third party. The union and/or employer is defrauded because the members of the union and/or the public served by a public employer are not receiving what they expect and are entitled to, namely, the employee's honest services.

The defendant at issue in connection with such a scheme need not herself owe the fiduciary duty personally, so long as she devised or participated in a bribery or kickback scheme intended to deprive the union and/or the employer of its right to a fiduciary's honest services.

For bribery and for kickbacks, there must be a specific intent to give or receive something of value with the corrupt intent of inducing the recipient purporting to act for and in the interests of the union and/or his employer the Commonwealth of Massachusetts to act in his own interest instead of the interest of the union or the employer's interest. But without a bribe or kickback, undisclosed self-dealing, such as the failure to disclose a conflict of interest, does not satisfy this element.

The scheme to give or receive something of value to induce the employee to act must involve an exchange, or again to use the Latin phrase meaning "this for that," which involves a *quid pro quo*. Payment of the thing of value may be made before or after the action sought to be induced occurs. However, the scheme or agreement, in order to make this *quid pro quo* exchange must be arranged in advance of the action that completes the exchange.

The individual providing the thing of value need not state the *quid pro quo* in express terms; the scheme to exchange something of value to induce a future action may be spoken or unspoken, otherwise the law's effect would not, as intended, capture the classic knowing wink or nod. Consequently the intent to exchange may be established by circumstantial evidence, based upon the defendant's words, conduct, acts, and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn from them.

It is not sufficient, however, that the thing of value is given as a gesture, to curry favor, to cultivate a friendship, or to express gratitude. A goodwill gesture given simply with the generalized hope or expectation of ultimate benefit on the part of the donor does not constitute a bribe or kickback. A payment made

to reward the employee for an act he has already taken or has already determined to take is not a bribe. Instead, the thing of value must be offered by the giver and accepted by the recipient in exchange for a promise to act in the recipient's interests instead of acting in his employer's interest.

Payment made to a third party may constitute a thing of value to a union official and/or employee based on the subjective value placed on that thing of value by the employee. A person may act with a mixture of motives, but the Government must prove that the provision of the thing of value is intended at least in part to corruptly induce the union official or public employee to take actions for his own interests, rather than for the union or public employer.

The second element of honest services wire fraud is that the defendant participated in the scheme to defraud knowingly and willfully and with the intent to defraud.

As with straight wire fraud the Government must prove beyond a reasonable doubt that the defendant at issue acted "knowingly", that is that the defendant was conscious and aware of his or her actions, realized what he or she was doing or what was happening around him or her, and did not act because of ignorance, mistake, or accident.

And as with straight wire fraud, the Government must prove beyond a reasonable doubt that the defendant at issue is acting "willfully." An act is willful if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law.

You should remain vigilant, with regard to finding a specific intent to defraud, that you may find such an intent, though you are not required to do so, if you find beyond a reasonable doubt that the defendant acted with reckless disregard or reckless indifference to the truth or falsity of his or her statements or omissions. Conversely, if the defendant acted in good faith, he or she cannot be guilty of the crime. I have explained the concept of good faith more fully in connection with straight wire fraud. That instruction is equally applicable to honest services wire fraud. The burden to prove intent, as with all other elements of the crime, including lack of good faith, rests with the Government.

Intent or knowledge may not ordinarily be proven directly because there is no way of directly scrutinizing the workings of the human mind. In determining what the defendant knew or intended at a particular time, you may consider any statements made or acts done or omitted by him or her and all other facts and circumstances received in evidence that may aid in your determination of that

defendant's knowledge or intent. You may infer, but you certainly are not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts are proven by the evidence received during this trial.

As with straight wire fraud, the Government must prove beyond a reasonable doubt that the alleged honest services wire fraud involves a false representation or fraudulent failure to disclose that relates to a material fact. A "material fact or matter" is one that has a natural tendency to influence or is capable of influencing the decision of the decision-maker to whom it was addressed. Information may be "material" for an employer if the employee had reason to believe the information would lead a reasonable employer to change its business conduct, for example by failing to authorize the underlying contract. Similarly, information may be "material" to members of a union if the union official owing the fiduciary duty to the union and its members had reason to believe that the information would affect a course of action, contract, or payment that the union agreed to take based on that information.

Put differently, if you find that a fact was intentionally withheld or omitted, you must determine whether the fact was one that a reasonable person might have considered important in making his or her decisions. The Government, however, need not prove that anyone actually relied on a statement. If a scheme to defraud has been or is intended to be devised, it makes no difference whether the persons the schemers intended to defraud are gullible or skeptical, dull or bright.

And again, as with straight wire fraud honest services wire fraud requires the Government to prove that that the defendant caused an interstate wire communication, as I have already defined it for you, to be used, or that it was reasonably foreseeable that, for the purpose of executing the scheme or in furtherance of the scheme, an interstate wire communication would be used, on or about the date alleged. We now turn to the Obstruction of Justice charges alleged in Counts VIII and IX. And in Count VIII we encounter a different theory by which the Government is pursuing its charges as alleged there, through the allegation of aiding and abetting.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff, v. DANA A. PULLMAN and ANNE M. LYNCH, Defendants.	)	Criminal Action No. 19-10345-DPW

BEFORE THE HONORABLE DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE

JURY TRIAL DAY 15

October 27, 2022
9:10 a.m.

John J. Moakley United States Courthouse
Courtroom No. 1
One Courthouse Way
Boston, Massachusetts 02210

Kelly Mortellite, RMR, CRR
Official Court Reporter
One Courthouse Way, Room 3200
Boston, Massachusetts 02210
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anything -- my own view is I need all the help I can get, perhaps you do, too. So we'll try to deal with it that way. We'll start now, unless there's something further from counsel, with the government's closing argument.

You may proceed.

MS. BARCLAY: Thank you, Your Honor.

Dana Pullman was a sworn law enforcement officer with the Massachusetts State Police. He owed the Commonwealth of Massachusetts, the taxpayers, his honest services. Dana Pullman was also the president of the State Police Association of Massachusetts, a union funded almost entirely with dues paid by troopers and sergeants working for the State Police. Dana Pullman owed the union and those dues-paying members his honest services.

In his position as a trooper and as SPAM president, he was supposed to represent the best interests of the Commonwealth and SPAM. But instead of acting in the best interests of those who were paying him to do just that, Dana Pullman conspired with Anne Lynch to use SPAM to their own personal financial advantage time after time after time. And instead of being honest, they cheated. They scammed the Commonwealth, SPAM, Mark43, TASER and the IRS. And then as their scheme started to unravel, this cop and this lobbyist tried to obstruct a federal investigation.

Since at least as early as 2013 Dana Pullman and Anne

Lynch had been executing an extensive scheme involving fraud, kickbacks, and obstruction, and because the defendants used SPAM to commit their crimes, it wasn't just fraud and kickbacks and obstruction. It was racketeering.

Dana Pullman and Anne Lynch used a legitimate organization, the bargaining unit for 2,000 employees of the State Police, as their personal racketeering enterprise, lining their pockets with money stolen through fraud from the Commonwealth, the membership and from vendors who were looking to do business with the Massachusetts State Police, and then they tried to cover it up.

State Police Association of Massachusetts, SPAM, you've heard a lot about the organization over the last few weeks, about its structure, its purpose, its financials, how the Executive Board was made up of troop reps and the four constitutional officers, how the president and treasurer positions, those were full-time union positions, which meant that Mr. Pullman was drawing two salaries. He got paid by the State Police and he got paid by SPAM, and you heard from Special Agent Lemanski that Mr. Pullman got two W-2s and in 2016 alone he made over 142 million dollars -- I'm sorry -- $142,000. Excuse me.

But you also heard that $142,000 wasn't enough for Dana Pullman. Now, as the president of SPAM, according to E-Board members like the first witness you heard from, Carl

Brenner, the former E-Board member, Pullman was the face of the union, and it was Pullman who conducted the affairs of the union.

He was a strong president, according to the secretary, the long-time secretary Edward Hunter, and it was Pullman's way or the highway. And by his side was Anne Lynch. Dana Pullman and Anne Lynch were a team. They're both from Natick. They had friends in common and eventually became, in the words of Anne Lynch, which you heard in this courtroom last week, very
09:20 good friends. And maybe their relationship as it related to SPAM started off as union official and lobbyist, but it evolved into much more than that.

By 2012, when Dana Pullman was elected president of SPAM, Lynch was doing more than just lobbying, more than just lobbying for SPAM and Pullman. You saw the email that she sent after Mr. Pullman was elected president in 2012. It's Exhibit 19, the email with the draft E-Board agenda. She was literally helping Mr. Pullman set the agenda for SPAM. You heard she made suggestions to the E-Board about how it should conduct its
09:21 business and that she went above and beyond for SPAM. She was speaking at E-Board meetings and annual meetings and having meetings with SPAM's attorneys and business lunches with Pullman. And her son, Peter D'Agostino, he testified that Anne Lynch was doing all manner of things that might be outside the scope of a normal lobbying contract.

Now, Mr. D'Agostino said she was doing it without getting paid, and I'll get back to that in a few minutes. But for now, suffice it to say, Mr. Pullman and Ms. Lynch were a team. Pullman was in charge of the operation and management of SPAM, and Lynch played an active role in Pullman's administration.

Now, you may be thinking how can a legitimate organization like SPAM also be a racketeering enterprise? And over the last several weeks you heard a lot about the good things that SPAM and even Dana Pullman and Anne Lynch did over the years. The DOL settlement itself, not the expense reimbursements that I'll talk about in a minute, but the actual money paid to those state troopers was a great result. Donations to charities, assistance to families of fallen officers, gifts for retirees, good employment contracts for troopers. We acknowledge those were all good things. The government doesn't need to prove that SPAM was exclusively a racketeering organization. The term "racketeering enterprise," it includes legitimate and illegitimate organizations. A union like SPAM can be used to commit crimes and it can also be a victim, like it is here.

So the government fully embraces all of the good things that SPAM and even Dana Pullman and Anne Lynch did for the membership and for the organization over the years because those things make the crimes that Pullman and Lynch committed

using SPAM behind the backs of the troopers they represented all the more devastating to the organization and to its membership. And in fact, Mr. Pullman and Ms. Lynch could not have committed their crimes without SPAM, without its money, its influence and its resources.

Now, although the first payment from Lynch to Pullman was the Mark43 payment in August of 2014, I want to start with the DOL settlement because the defendants' scheme to defraud SPAM and the Commonwealth of Pullman's honest services, that started way back in at least as early as April of 2013.

By now you've heard enough about the DOL issue. And you know it boils down to this: The Commonwealth admittedly owed troopers money but by late 2012 no one had figured out exactly how much was owed and to whom. So instead of hiring an accounting firm to crunch the numbers, like Eddie Hunter had suggested, Pullman hired Anne Lynch's firm, Lynch Associates, a lobbying and association management firm to do the work.

Now, Pullman negotiated that contract with Anne Lynch by himself without the help or approval of SPAM's treasurer, SPAM's own accountants or the E-Board, and we have no real insight into how Pullman and Lynch came up with that original figure, that $200,000. But you do have the contract. That's Exhibit 120.

This contract, which Pullman signed and stated that the work be done for a flat fee of $200,000, take a look at

that contract. You'll have it with you in the jury room. All the work that the defense has described through cross-examination of E-Board members and through Pete D'Agostino, all of the work that he did was contemplated by this agreement for the fixed fee of $200,000. And no doubt Pete D'Agostino worked hard on the DOL, but it was his job to work hard, and he was getting paid for it. They were getting over 200,000 -- they were getting $200,000 and that's over and above the $7,000 a month that SPAM was already paying Lynch Associates for its monthly retainer. That's $84,000 a year for the retainer. And not for nothing, but Mr. D'Agostino wasn't a lawyer or an accountant. At the time, he wasn't even an experienced manager or lobbyist. He was a distinguished Black Hawk pilot recently retired from the Army with some energy and initiative but only a high school diploma, and even Pullman couldn't justify paying him 275 an hour.

09:25

09:26

You heard from Andy Daly that in April of 2013 Pullman told him that he had hired Lynch for the DOL for about $200,000. Daly told you that he thought it sounded like a lot of money and he told you that he said that to Mr. Pullman. But the deal was done, and as usual, it was Pullman's way or the highway.

Fast forward eight months later, December of 2013. D'Agostino, Mr. D'Agostino and Ms. Lynch, they decided that they should get more money from SPAM. And why not? Pullman

was willing to pay them and he and Anne Lynch reached a new agreement, this one for $350,000. And again, Pullman and Lynch decided with no witnesses. Mr. D'Agostino was out of the loop by then and no one at SPAM knew about it. It was Pullman and Lynch together and alone. They agreed that SPAM will pay Lynch $350,000 but they don't put it in writing. There's no new contract. There's no addendum to the old contract. There is no email. There's not even a text message. Just an agreement between two colleagues, two very good friends, two co-conspirators.

09:27

Meanwhile, as they're negotiating that $350,000 with each other, Pullman and Lynch were negotiating the DOL settlement with the Commonwealth dealing specifically with John Langan from the office of employee relations. Now, Pullman is a tough negotiator, but Langan is tough, too, and when he told him SPAM had over $700,000 in expenses, Langan insisted on seeing all the evidence, receipts, invoices, contracts, anything that could support Pullman's claim and justify the Commonwealth paying half of the expenses, which coincidently was $350,000. Because in Langan's own words, compared to the $21 million, the ultimate DOL settlement, it might be a small amount, but very respectfully, $350,000 is a lot of money, a lot of taxpayer money.

09:28

Langan insisted and Pullman refused. He refused because he didn't have the back-up. So Pullman went over

Langan's head to the governor's office and Maydad Cohen. Pullman, Anne Lynch they stalked Cohen until he caved. They finally got their $350,000 with Langan and Cohen believing that the money was going to SPAM to reimburse SPAM for its DOL expenses and without knowing that that entire $350,000 was going to Lynch Associates and then $20,000 was getting kicked back to Dana Pullman personally.

Langan and Cohen both told you they never would have signed off on the DOL settlement had they known that Pullman was going to personally benefit from the agreement. They were both shocked when they heard the allegations and Langan told you "We can't engage in self-dealing. You can't take money and put it in your own pockets." But that's exactly what Lynch and Pullman did.

After the deal was done, while Pete D'Agostino was waiting for SPAM to pay that final bill to Lynch Associates, he's waiting to get his final payment for the work, he had a call with his mother. And Anne Lynch told her son, "Dana hit me up for a check," for a personal payment to Pullman himself. Lynch Associates was not going to get paid unless Pullman got paid. D'Agostino knew it was wrong. He told Anne Lynch that it was B.S. He knew that Pullman got his own DOL settlement and that he was being paid by the union to do exactly what he had done, negotiate the DOL settlement. Why should Pullman get more money? And Anne Lynch agreed that it was B.S. and wrong,

but she didn't say no.

This woman, this woman here who held her own with truckers and troopers alike, she did not say no. She agreed to pay Pullman but first she needed the SPAM check. That's when Pullman went to Andy Daly and demanded that final check for Lynch.

Now, you remember Exhibit 234. The union had already paid Lynch Associates by that point. They had already paid $100,000 for the DOL work. But Pullman demanded another check from Andy Daly, this one for $250,000, meaning the entire 350 from the Commonwealth would end up going to Lynch Associates. Nothing to cover the temporary employees, the office space, the office supplies, the personnel, none of SPAM's out-of-pocket expenses were going to get paid.

So in a rare show of defiance to the man who literally groomed him to be the treasurer of SPAM, Andy Daly questioned Pullman. He said it seemed like too much money for a person already on retainer and he thought it sounded like SPAM was getting fleeced. And what was Dana Pullman's response? That's when he banged on Andy Daly's desk and told him to "stop breaking my fucking balls and give me a check." And Andy Daly did just that. That's the $350,000 that came in to SPAM. He gave Pullman a check for Lynch Associates for $250,000. Little did Andy Daly know that Pullman was anxious for that check because, without it, Lynch couldn't make the personal payment

to him. She couldn't pay his kickback.

The payment that Lynch made to Pullman with the DOL money is a classic kickback. You cause your employer to pay me money, and then I'll secretly kick back some of that money to you, a quid pro quo, this for that. And that's what happened. Pullman caused SPAM to pay Lynch Associates the entire $350,000, and in exchange Anne Lynch secretly kicked back $20,000 of that money to Pullman writing a check to Dana Pullman from her -- not by -- I'm sorry, not by writing a check
09:33 to Dana Pullman from her business account but by writing herself a $50,000 check. That's Exhibit 189. Then she deposited that check into her personal account and wrote the $20,000 check to Melissa Pullman.

Now, why is the $50,000 check from the Lynch Associates account handwritten and not printed from QuickBooks like the vast majority of the checks that came out of Lynch Associates? Anne Lynch didn't want to ask Erin Delaney for a check she knew was part of a criminal fraud scheme. And why didn't Anne Lynch tell Pete D'Agostino when she gave Dana
09:33 Pullman this check? Because it was the least she could do. She kept her sons and her best friend's fingerprints off the actual kickback check.

Let's talk for a minute just about Pete D'Agostino's involvement in this kickback scheme. He claimed he wasn't concerned about the payment to Pullman at the time, but you saw

what an comfortable position Mr. D'Agostino was in here in this courtroom testifying against his own mother. Maybe he really wasn't concerned about the payment to Pullman at the time because he was naive and didn't want to believe his mother and a state trooper would do something wrong. But even he had to admit under oath that there was no legitimate reason, none, for Anne Lynch to pay Dana Pullman in connection with the DOL. So maybe he wasn't so naive after all.

When Lynch paid Pullman the DOL money, these two
09:34 defendants stole the union's right to Pullman's honest services as the SPAM president and they stole the Commonwealth's right to his honest services as a state trooper. And they both took steps to hide their fraud scheme. Anne Lynch by running the payment through her personal account and by making the check payable to Melissa Pullman and Dana Pullman by failing to put this on his tax return for 2014.

Now, the DOL check, that wasn't the first check from Lynch that went into the bank account, because by that time Ms. Lynch and Mr. Pullman had already defrauded Mark43. To
09:35 back up a little, in early 2014, while they're scheming to make money off of the DOL, Pullman and Lynch discover that there was another way to line their pockets, selling SPAM's support.

The State Police was the premier law enforcement agency in the Commonwealth. You heard that from Mark Swenson, the TASER salesman. Companies wanted to do business with the