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(https://ggulawreview.files.wordpress.com/2015/03/fishing.jpg)

Last month, the Supreme Court delivered its opinion in Yates v. United States (http://www.supremecourt.gov/opinions/14pdf/13-7451_m64o.pdf), overturning the Eleventh Circuit and holding that a provision of Sarbanes Oxley – the law enacted in response to the sort of corporate and accounting fraud seen in the Enron scandal – does not apply to the destruction

of fish. That's right, fish – Red Grouper to be specific. While this may seem like the obvious result, considering the activities of South Florida fisherman share little in common with the sort of white collar crimes we associate with Sarbanes-Oxley, the two lower courts hearing the issue reached a different conclusion, and even the Supreme Court was divided 4-1-4. Ultimately concluding Congress had specific intentions when drafting the poorly worded statute at issue, the plurality dug deep into its tackle box of statutory interpretation tools to limit the scope of the broad phrase "tangible object." As a plain meaning interpretation would render the statute applicable in virtually every instance of evidence tampering, the Court expressed concern over the leverage the threat of twenty years behind bars would provide prosecutors, especially in instances such as this, where the defendant's conduct amounts to a mere civil infraction.

In August 2007, John Yates, captain of the Miss Katie, a commercial fishing boat based out of South Florida, was six days into an expedition in the Gulf of Mexico when Officer John Jones of the Florida Fish and Wildlife Conservation Commission boarded his vessel to perform a routine inspection. While on board, Officer Jones noticed several fish hanging on the deck that appeared under the legal limit of 20 inches, a violation punishable by fine or fishing license suspension. Suspecting there may be more, Officer Jones proceeded to inspect the remainder of the Miss Katie's catch, ultimately discovering 72 undersized fish. After separating the undersized fish from the others, Officer Jones issued Yates a citation and instructed him to leave the fish separated until his vessel returned to port, where they could be properly documented and disposed of.

Four days after the initial interaction, Officer Jones again met up with the Miss Katie upon the vessel's return to port. Jones reinspected the catch, measuring the fish that had been previously separated as under the legal limit. However, after measuring the fish a second time, Officer Jones noticed the sizes did not match up with his records; although the fish were still undersized, most were just barely under 20 inches. Suspecting the fish were not the same fish he measured before, Officer Jones began an investigation in which he discovered Yates had instructed his crewmembers to throw the smaller fish overboard, and to replace them with other fish in the catch. Based on his orders, Yates was indicted for destroying, concealing, and covering up undersized fish to impede a federal investigation, a violation of 18 U.S.C. § 1519 (https://www.law.cornell.edu/uscode/text/18/1519).

As noted above, Section 1519 was enacted as part of the Sarbanes-Oxley Act of 2002 – legislation intended to protect investors by targeting acts of corporate fraud. Section 1519, titled "Destruction, alteration, or falsification of records in Federal investigations and bankruptcy," provides:

"Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States…shall be fined under this title, imprisoned not more than 20 years, or both."

The issue the court had to decide in the case was whether the fish Yates tossed overboard fall within the scope of a "tangible object" as that term is used in the statute. The Department of Justice urged to the Court to apply a plain meaning interpretation of the phrase, a formulation with which the Federal District Court and Eleventh Circuit Court of Appeals agreed. Yates, on the other hand, pointed to Section 1519's title and origin as a provision of Sarbanes-Oxley, arguing the statute "only applies to records, documents, or tangible items that relate to recordkeeping."

In a four-one-four decision, Justice Ruth Bader Ginsburg, writing for the plurality, reversed the lower court and agreed with Yates' interpretation. Focusing on the context in which the phrase "tangible object" appears, the section's title and location amongst other specialized provisions in the code, and the list of words preceding the phrase, the main opinion concluded "tangible object" within Section 1519 is limited to those objects used to record or preserve information. Relying in part of the principle of noscitur a sociis – "a word is known by the company it keeps" – the court stated, "'[t]angible object' is the last in a list of terms that begins 'any record or document.' The term is therefore appropriately read to refer, not to any tangible object, but specifically to the subset of tangible objects involving records and documents, i.e. objects used to record or preserve information." Justice Alito, in his concurring opinion, similarly relied on the statute's list of nouns and verbs preceding the phrase "tangible object," as well as the section's title. In his view, "[a]lthough perhaps none of these features by itself would tip the case in favor of Yates, the three combined do so."

According to the dissent, authored by Justice Kagan and joined by Justices Scalia, Kennedy and Thomas, the issue was much simpler than the plurality's "fishing expedition" to come up with an interpretation made it out to be. In their view, the plain meaning of "tangible object" includes fish, and the long list of words surrounding the phrase expressed Congress' intent that the statute has a wide range of application. Despite agreeing with the plurality that Section 1519 is a "bad law – too broad and undifferentiated, with too-high maximum penalties, which gives prosecutors too much leverage and sentencers too much discretion[,]" the dissent saw the plurality as replacing a statute enacted by Congress with an alternative of its own design.

Although the plurality's opinion in Yates reads like a lesson in obscure principles of statutory interpretation, the oral argument (http://www.oyez.org/cases/2010-2019/2014_13_7451) in this case provides the greatest insight to the justifications for the holding. After asking the Department of Justice attorney about several hypothetical scenarios such as an individual throwing back a single undersized fish, someone who picks and disposes of a protected flower, or a camper who covers embers from a fire where it was not allowed, the Court appeared reluctant to interpret the statute in a manner that would allow its application to such a wide variety of trivial cases. In the words of Chief Justice Roberts, the statute's 20-year maximum sentence would provide prosecutors "extraordinary leverage," encouraging offenders to take plea deals that would still exceed what is fitting for their conduct. Of particular concern to the Justices was a statement made by the DOJ attorney that it is agency policy to seek the most severe punishment available when pursuing prosecution.

As pointed out by the dissent, Section 1519 is not an outlier, "but an emblem of a deeper pathology in the federal criminal code." Overly broad statutes with high maximum punishments and affording prosecutors and judges a great deal of discretion are not uncommon in our system, and undoubtedly contribute to our country's status as the world leader in incarceration (http://www.sentencingproject.org/template/page.cfm?id=107). Although the decision in Yates at times seems as though the Court was reaching to achieve the desired outcome, this case sends an important message that similar broadly worded statutes will be closely scrutinized, including not only their legislative history, but also the context, title, placement in the code, and the potential far reaching consequences.

Tags: Enron, Fishing, Fraud, Incarceration, Red Grouper, Sarbanes Oxley, split decision, supreme court, White Collar Crime, Yates v. United States