

United States v. Gray, et al.

96 F.3d 769 (5th Cir. 1996)

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Appellants Gray, Thomas, and Drummond were charged with conspiracy to commit mail and wire fraud in violation of 18 U.S.C. §1343, §1341 and §1346. All three were convicted of the conspiracy charge; Gray was convicted of two counts of wire fraud; Thomas was convicted of three counts of wire fraud; and Drummond was convicted of four counts. Charges were made in connection with a fraudulent scheme to establish academic eligibility for transfer students to play basketball at Baylor University. Each entered an appeal to the United States Court of Appeals for the Fifth Circuit challenging the sufficiency of the evidence supporting their conspiracy, wire fraud and mail fraud convictions. Furthermore, Gray and Thomas contended that §1346 is unconstitutionally vague as applied to them and challenged portions of the charges read to the jury. The Court of Appeals affirmed the District Court's decision that appellants deprived the university of its tangible right of honest services of its employees, the convictions did not improperly criminalize deceit, the jury instructions were proper, and the "honest services amendment" to mail and wire fraud statutes was not unconstitutionally vague.

Gray and Thomas argued the mail and wire fraud statutes did not encompass the type of property deprivation at issue in their case. As with any question of statutory meaning, the court looked at the language of the statute. The applicable rule used was: absent any contrary definition, Congress intends the words in its enactments to carry their ordinary, common meaning.

In this case, the statutes in question were 18 U.S.C. §1343 and §1346. The pertinent part of §1343 is the statement: "whoever having devised or intended to devise any scheme or artifice to defraud." The term "scheme or artifice to defraud" is then defined in § 1346 as to include a scheme or artifice to deprive another of an "intangible right of honest services."

Gray and Thomas next argued their convictions improperly criminalized mere deceit because they lacked the requisite intent to either harm the victims or obtain personal benefit. Again, the court looked to the statute to find the law in the "honest services amendment" to the mail and wire fraud statutes. This statute allows the government to charge an individual with fraud based on a scheme or artifice to deprive another of the intangible right of honest services. The court has previously held a breach of fiduciary duty can constitute illegal fraud, only when there is some detriment to the employer. Detriment can be deprivation of an employee's faithful and honest services in violation of the employee's duty to disclose material facts.

The court found the information withheld, the coaches' cheating scheme, was material because Baylor University did not get the quality student it had expected.

Gray and Thomas further contended that portions of the jury instructions were erroneous. Jury instructions are reviewed for abuse of discretion and for plain error. Plain error is an error so obvious that failure to notice it would seriously affect the fairness, integrity, and public reputation of judicial proceedings. The court found that the instructions given to the jury correctly stated the law. The court also found that because §1346 is constitutional and sufficient evidence was found supporting appellants convictions, the jury instructions did not constitute plain error.

Finally, Gray and Thomas argued that §1346 is unconstitutionally vague as applied to them. The “void for vagueness” doctrine requires that a statute define the offense with sufficient definiteness that ordinary people can understand what conduct is prohibited. The Supreme Court has held that vagueness challenges must be examined in light of the facts of the case. In evaluating §1346 under the facts of the instant case, the court found that Gray and Thomas clearly acted willfully and with the intent to defraud Baylor of their honest services.

For the reasons stated above, the defendants’ convictions and sentences were affirmed.