

SCOTUS Limits Definition Of “Tangible Object” Under Sarbanes-Oxley Act

March 3, 2015 | [Government-investigations](#), [The GEE Blog](#)



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The Supreme Court recently issued a decision in the case discussed in the December 2014 post “[Prosecutorial Over-criminalization: Fishing for Guilty Pleas](#).” This case involved the conviction of Mr. Yates, a fisherman, who was found guilty of violating 18 U.S.C. §1519, the so-called “anti-shredding” provision of the Sarbanes-Oxley Act. A federal jury convicted Yates of destroying a tangible object with the intent to obstruct an investigation after he ordered his crew to discard some fish which fell short of the minimum legal size. The Eleventh Circuit upheld the ruling, finding that the phrase “tangible object” applied to fish. The Supreme Court, in a 5-4 decision issued last week, overturned the Eleventh Circuit and ruled in favor of Mr. Yates. In its brief, the Government argued the Court should take a plain, natural reading of the word “tangible object,” which would no doubt include fish. Conversely, Yates urged the Court to read §1519 contextually, taking into account the purpose of the Sarbanes-Oxley Act, the statute’s titles and headings, and the surrounding provisions. Justice Ginsburg, joined by Chief Justice Roberts, Justice Sotomayor, and Justice Breyer, agreed with Yates, and stated that “‘tangible object’ in §1519 is better read to cover only objects one can use to record or preserve information, not all objects in the physical world.” 574 U.S. ____ (2015) (Opinion of Ginsburg, J.)^[1] Justice Ginsburg continued that the Sarbanes-Oxley Act was enacted in response to the Enron collapse and corresponding cover-up, and stated “it would cut §1519 loose from its financial-fraud mooring to hold that it encompasses any and all objects, whatever their size or significance.” *Id.* For a “tangible object” to be captured by §1519, the Court held, it “must be one used to record or preserve information.” Justice Kagan, in dissent, noted that although she believes fish are tangible objects, the real issue in the case was that the law was too harsh, “too broad and undifferentiated, with too-high maximum penalties, which gives prosecutors too much leverage...” The *Yates* decision is significant not only to Mr. Yates, but also to other individuals who have been convicted or are being threatened with prosecution under §1519 of the Sarbanes-Oxley Act. Remember, Mr. Yates faced a maximum 20 year prison term for throwing away some fish. Indeed, as outlined in the December 2014 article, threatening prosecution under §1519 has been a prosecutorial tactic used to elicit guilty pleas and cooperation from individuals facing exorbitant sentences since its enactment in 2002. For example, federal prosecutors handling the trial of accused Boston Marathon bomber, Dzhokhar Tsaranaev, used §1519 to win a conviction and a guilty plea against two of Tsaranaev’s college friends, Azamat Tazhayakov and Dias Kadyrbayev. These two were charged with violating §1519 by removing Tsaranaev’s backpack from Tsaranaev’s apartment. Tazhayakov was convicted by a jury and is awaiting sentencing. Kadyrbayev pleaded guilty after Tazhayakov was convicted in

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exchange for a reduced sentence of no more than seven years. Both are, or were, expected to testify at Tsaranaev's trial in exchange for leniency at sentencing. With the *Yates* decision, however, they each have strong arguments that their conduct no longer fits within the purview of §1519 as a backpack is not a "tangible object" used to "record or preserve information." Although it is yet to be seen how *Yates* will affect the government's use of §1519, this much narrower definition will limit prosecutors' ability to use §1519 to intimidate individuals into pleading guilty and/or cooperating with the government. Tazhayakov's attorney has indicated he will appeal the conviction, and we will update this post as appropriate. [1] Justice Alito concurred on similar grounds, stating that when he hears the term "tangible object . . . a fish does not spring to mind — nor does an antelope, a colonial farmhouse, a hydrofoil or an oil derrick."