

13-7451 YATES V. UNITED STATES

DECISION BELOW: 733 F.3d 1059

LOWER COURT CASE NUMBER: 11-16093

QUESTION PRESENTED:

QUESTION 1: In the wake of the criminal charges filed against Enron's corporate officers, Congress passed the Sarbanes-Oxley Act of 2002. Known as the "anti-shredding provision" of the Act, 18 U.S.C. § 1519 makes it a crime for anyone who "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 or obstruct an investigation. 18 U.S.C. § 1519 (emphasis supplied). John L. Yates, a commercial fisherman, was charged and convicted under this anti-shredding criminal statute for destroying purportedly undersized, harvested fish from the Gulf of Mexico after a federally-deputized officer had issued him a civil citation and instructed him to bring them back to port.

This petition presents the important question of whether the reach of section 1519 extends to the construction of anything meeting the dictionary definition of "tangible objects," or instead is limited to the destruction of tangible objects related to record-keeping as follows:

Whether Mr. Yates was deprived of fair notice that destruction of fish would fall within the purview of 18 U.S.C. § 1519, where the term "tangible object" is ambiguous and undefined in the statute, and unlike the nouns accompanying "tangible object" in section 1519, possesses no record-keeping, documentary, or informational content or purpose?

QUESTION 2: Whether the Eleventh Circuit's affirmance of the district court's wholesale preclusion of Dr. Richard Cody from testifying at trial as either an expert or lay witness in the defense's case-in-chief as a drastic sanction for the defense's inadvertent failure to include Dr. Cody on the defense's trial witness list violated Mr. Yates's Fifth and Sixth Amendment rights to due process, compulsory process for obtaining witnesses in his favor, and to present a complete defense, even though even though Dr. Cody: (1) was listed as an expert witness on the government's trial witness list; (2) testified for the government in a *Daubert*ⁱ hearing on the morning that the jury trial commenced; and, (3) was under a defense subpoena for trial?

ⁱ*Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993)

LIMITED TO QUESTION 1 PRESENTED BY THE PETITION.

CERT. GRANTED 4/28/2014