

Extortion case will go on, despite recent rulings some say undercut the case



Kenneth Brissette pushed festival organizers to hire union members.

By [Maria Cramer](#) GLOBE STAFF MARCH 01, 2018

Two City Hall officials accused of pressuring organizers of the 2014 Boston Calling music festival to hire union workers must face trial, a judge ruled Wednesday, despite a recent court ruling that has made it harder to prosecute extortion cases involving organized labor.

US District Judge Leo T. Sorokin denied the latest defense motion to dismiss the extortion charges against Kenneth Brissette, the city's head of tourism, and Timothy Sullivan, head of governmental affairs, who have been on paid leave since they were indicted in 2016. Their trial is scheduled to begin next month.

In his ruling, Sorokin disagreed with defense attorneys that the recent decision should lead him to dismiss the prosecution's case, a highly unusual step so close to trial.

"Under these circumstances, the court may not engage in a broad assessment of the legal sufficiency of the government's evidence," Sorokin wrote.

Sorokin also ruled that prosecutors can introduce evidence they say shows Brissette knew he was acting illegally in August 2014 when he threatened to withhold city permits from Crashline Productions, the festival organizers, if they did not hire union workers. The company eventually hired Local 11 members.

Two months earlier, Brissette had a similar conversation with "Top Chef" producers, who were under pressure to hire union members as they filmed around Boston, according to testimony in last year's trial of four Teamsters. The men were acquitted in August of trying to extort producers of the reality cooking show.

Prosecutors have said that Joseph Rull, then the city's chief of operations, told Brissette in June 2014 that it was illegal to threaten to withhold permits.

Still, many observers believe the case will be an uphill climb for federal prosecutors, who have had to recast their arguments in light of a federal appeals court ruling that made it more difficult to prove extortion in cases where unions lobbied for work.

Last September, the court overturned the 2014 racketeering conviction of Teamsters John Perry and Joseph Burhoe, holding that union officials cannot be convicted of extortion under the Hobbs Act if they were seeking to land real jobs, rather than simply extract money from an employer.

That ruling, known as the Burhoe decision, has complicated matters for prosecutors, who initially said Brissette and Sullivan were acting as agents of the union.

“We would all agree if a union or some city official who was sympathetic to unions said ‘You have to give this person \$50,000 in a briefcase,’ that would be an extortion matter,” said Michael Anderson, a labor lawyer based in Boston. “But Burhoe says that it’s not a briefcase full of cash if you are doing actual work.”

Prosecutors now contend that Brissette and Sullivan committed extortion because they violated federal laws when they leaned on Boston Calling to give work to the union.

“There were no state laws or regulation or contract that allowed these defendants to insist the victims use union labor,” Assistant US Attorney Laura Kaplan said in a January hearing before Sorokin.

Although Brissette and Sullivan didn’t receive any money from Boston Calling, they still broke the law because their demands led to the union receiving work, prosecutors said. That was meant to please their boss, Mayor Martin Walsh, prosecutors said.

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“There will be evidence . . . that the union was thrilled that they had gotten this contract and [the union] should continue to work hard for the Walsh administration because they get things done,” Kaplan said.

Lawyers for Brissette and Sullivan countered that prosecutors had misread federal laws, and that the evidence would show that neither defendant received any financial benefit when Boston Calling eventually hired the union.

But Sorokin ruled that the Burhoe decision did not address “conduct outside the scope of ‘protected union activity’ . . . or whether defendants who are not union members or agents may pursue legitimate labor objectives.”

Specialists said the case is likely to hinge on whether the jury believes prosecutors were right to intervene in the rough-and-tumble world of city politics, or if the matter should have been in the civil courts.

“The Burhoe decision . . . creates a challenge to a federal prosecutor to show that this is not the overcriminalization of city politics,” said Martin G. Weinberg, a defense attorney.

In a recent interview, Andrew Lelling, the new US attorney for Boston, said he does not believe the case against Brissette and Sullivan is an overreach by prosecutors.

“I will encourage the prosecutors in my office to do ambitious cases,” he said. “I don’t think it’s in the public interest to have a prosecutor’s office that is too risk-averse.”