

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No. 05-709 (WJM)
 :
 v. : 18 U.S.C. §§ 666, 1341, 1346,
 : 1951, and 2
 :
 JOHN J. MERLA : **SUPERSEDING INDICTMENT**

The Grand Jury in and for the District of New Jersey,
sitting in Newark, charges:

COUNTS 1-4
ACCEPTING CORRUPT PAYMENTS FROM CONSTRUCTION CONTRACTOR

1. At all times relevant to Counts 1 to 4 of this
Indictment:

a. Defendant JOHN J. MERLA was the Mayor of the
Borough of Keyport, New Jersey ("Keyport" or the "Borough") and
also was employed as a supervisor with the New Jersey Turnpike
Authority. As mayor, defendant MERLA was in a position to
influence, and did influence, official action on behalf of
Keyport in the hiring of contractors to perform services for
Keyport.

b. Keyport was a municipality in Monmouth County,
New Jersey that received more than \$10,000 in federal funds
during the relevant one-year periods.

c. The cooperating witness ("CW") was an

individual who held himself out as someone involved in construction work, demolition work, and illegal loansharking, with his business operation being located primarily in the State of Florida.

d. Two law enforcement officers acting in an undercover capacity ("UC-1" and "UC-2" or, collectively, the "UCs") held themselves out as employees of CW.

The Corrupt Arrangement

2. From in or about September 2003 to in or about November 2004, defendant JOHN J. MERLA accepted a series of corrupt cash payments from CW and UC-1. In return for the cash payments, defendant MERLA agreed, among other things, to steer to CW contracts for public work in Keyport, to attempt to use his official influence to secure work for CW from private companies in Keyport, and to introduce CW to other influential public officials in Monmouth County who were similarly in a position to help CW secure public contracts.

3. A member of the Keyport Borough Council (the "Councilman"), who separately had accepted corrupt cash payments from CW, assisted defendant JOHN J. MERLA in these efforts and attempted to direct public work to CW.

4. With the assistance of defendant JOHN J. MERLA and the Councilman, CW ultimately secured two publicly funded contracts from Keyport. First, CW was awarded and completed a

contract to repair a bulkhead in the Borough. The Borough awarded that contract to CW without a bidding process, after declaring the bulkhead repair work an emergency. In or about March 2004, the Borough paid CW \$36,200 to complete that contract.

5. The Borough also hired CW to chip certain trees and brush in the Borough. In or about February 2004, the Borough paid CW \$9,200 to complete that work.

The Four Corrupt Payments

6. On or about August 19, 2003, while eating together at a diner in Keyport, defendant JOHN J. MERLA and CW discussed defendant JOHN J. MERLA accepting payments from CW for expenses for an upcoming picnic fundraiser in exchange for defendant MERLA steering public work in Keyport to CW. As CW explained during their recorded conversation, "I wanna get some work . . . and I gotta show my appreciation because I know you'll look out for me down the road." Defendant MERLA responded, "Okay." Defendant MERLA later informed CW that the picnic expenses amounted to \$7,000.

7. On or about September 11, 2003, at a restaurant in Keyport, defendant JOHN J. MERLA accepted \$9,000 in cash from CW. CW explained to defendant MERLA during their recorded conversation, "There's seven grand here for the picnic and two for you. Go put two thousand down on the, on the [Dodge] Durango

and get it in and we'll talk about the rest." CW further stated, "All's I need is your word for work. That's all I need."

Defendant MERLA responded, "We got work."

8. On or about December 7, 2003, at a birthday party for defendant JOHN J. MERLA's brother, defendant MERLA accepted an additional \$2,500 in cash from CW. In their recorded conversation, CW stated to defendant MERLA, "In here, in this envelope, is \$2,500 for you. That's for you for introducing me to everybody . . . and for making that emergency job." Defendant MERLA conveyed his thanks and talked about his political clout in Monmouth County. Defendant MERLA replied "no problem," in response to CW asking defendant MERLA to "let me know too . . . how much on the back end to build in for you" in connection with the bulkhead job.

9. In or about early January 2004, defendant JOHN J. MERLA approached CW about obtaining what defendant MERLA initially referred to as a \$10,000 "loan" from CW. CW responded during the recorded conversation that rather than offer the money as a loan, "I'd rather it be for future work and part of the bulkhead. How's that?" Defendant MERLA replied, "All right."

10. On or about January 12, 2004, at a restaurant in Keyport, defendant JOHN J. MERLA personally gave CW a letter from the Borough Clerk stating that CW had been awarded the bulkhead contract. Defendant MERLA then accepted from CW the \$10,000 in

cash that they previously had discussed. Confirming their agreement that the \$10,000 payment would be in return for future work and as consideration for the bulkhead job, defendant MERLA never paid back, or attempted to pay back, the \$10,000.

11. On or about November 23, 2004, at a diner in Keyport, defendant JOHN J. MERLA accepted a cash payment of \$1,500 from the UCs. In their recorded conversation, UC-1 stated to defendant MERLA, "That's for you. Thanks for all you do - took [CW] into consideration with the chipping. I know the bulkhead didn't work like we wanted it to work out, but [CW] said ask Johnny to keep us in mind for anything popping in the future." (UC-1's statement about the bulkhead project was a reference to the fact that the scope of that project had been scaled down following objections raised at a meeting of the Keyport Borough Council). Defendant MERLA responded by discussing his efforts in Trenton to secure approvals for a private demolition job that defendant MERLA had assured CW would be directed to him.

12. On or about the dates listed below, in Monmouth County, in the District of New Jersey, and elsewhere, defendant

JOHN J. MERLA

being an agent of the Borough of Keyport, did knowingly, willfully, and corruptly accept and agree to accept items of value, namely cash payments as listed below, intending to be

influenced and rewarded in connection with a business, transaction, and series of transactions of the Borough of Keyport, involving things of value of \$5,000 or more:

COUNT	DATE	ITEM OF VALUE OBTAINED
1	September 11, 2003	\$9,000 cash
2	December 7, 2003	\$2,500 cash
3	January 12, 2004	\$10,000 cash
4	November 23, 2004	\$1,500 cash

In violation of Title 18, United States Code, Sections 666(a)(1)(B) and 2.

COUNT 5
CONSPIRACY TO OBTAIN CORRUPT PAYMENTS FROM
CONSTRUCTION CONTRACTOR UNDER COLOR OF OFFICIAL RIGHT

1. Paragraphs 1 to 11 of Counts 1 to 4 are realleged and incorporated as if fully set forth herein.

The Conspiracy

2. From in or about July 2003 to in or about February 2005, in Monmouth County, in the District of New Jersey, and elsewhere, defendant

JOHN J. MERLA

knowingly and willfully conspired with others to obstruct, delay, and affect interstate commerce by extortion under color of official right, by obtaining corrupt payments that were paid by another, with his consent.

Object of the Conspiracy

3. The object of the conspiracy was for defendant JOHN J. MERLA and the Councilman to obtain cash payments from CW in return for corruptly using their official positions in Keyport and their official influence with other governmental contacts in Monmouth County to aid CW's business.

Manner and Means of the Conspiracy

4. It was part of the conspiracy that defendant JOHN J. MERLA and the Councilman each obtained multiple cash payments from CW.

5. It was further part of the conspiracy that after

obtaining the first of the cash payments that he received from CW, defendant JOHN J. MERLA told CW that the Councilman "[wi]ll be our point guy" for Keyport contracts that could potentially be steered to CW.

6. It was further part of the conspiracy that defendant JOHN J. MERLA and the Councilman then attempted to secure for CW contracts to perform work for the Borough, and succeeded in doing so with regard to the bulkhead project and the chipping project.

7. It was further part of the conspiracy that defendant JOHN J. MERLA and the Councilman also attempted to use their official influence to secure work for CW from private employers in Keyport, including a car dealer, a builder of residential homes, the owner of a coat factory, and the developer of an industrial site. In one recorded conversation, referring to his promise to kick back part of the profits from such contracts to defendant MERLA, CW stated, "One of these jobs that breaks is going to put us to the moon." Defendant MERLA responded, "I know. We're gonna do well. We're gonna do well."

8. It was further part of the conspiracy that defendant JOHN J. MERLA and the Councilman introduced CW to other public officials in Monmouth County, including multiple public officials who subsequently accepted corrupt payments from CW (the "Other Corrupt Officials"). Defendant MERLA and the Councilman

encouraged those officials to help steer public work to CW. Referring to his efforts to secure for CW the help of county-level officials, defendant MERLA in one recorded conversation stated, "We got to get in the county, buddy. Everybody's going to get a piece of the pie now."

9. It was further part of the conspiracy that defendant JOHN J. MERLA made efforts to conceal the existence of the conspiracy, such as by:

a. Not reporting the cash payments from CW on required disclosure forms, including the Financial Disclosure Statement required to be filed annually with the State of New Jersey, Department of Community Affairs; and

b. Meeting with UC-1 in or about December 2004 to warn him that one of the Other Corrupt Officials was rumored to be cooperating with law enforcement authorities, which defendant MERLA conveyed to UC-1 by writing the information on a piece of paper that he showed to UC-1.

In violation of Title 18, United States Code, Section 1951(a).

COUNTS 6-7
SCHEME TO DEFRAUD THE PUBLIC OF HONEST SERVICES

1. Paragraphs 1 to 11 of Counts 1 to 4 are realleged and incorporated as if fully set forth herein.

The Public's Right to Honest Services

2. At all times relevant to this Indictment, the Borough of Keyport and its citizens had an intangible right to the honest services of their public officials. As a public official of Keyport, defendant JOHN J. MERLA owed Keyport and its citizens a duty to, among other things, (a) refrain from obtaining or accepting corrupt payments or benefits designed to (I) improperly affect the performance of his official duties or (ii) cause favorable official action or inaction; and (b) disclose personal financial interests in official matters over which defendant MERLA, as Mayor of Keyport, exercised influence, authority, and discretion in favor of those interests, and to not affirmatively conceal such material information.

The Scheme to Defraud the Public of Honest Services

3. From in or about July 2003 to in or about February 2005, in Monmouth County, in the District of New Jersey, and elsewhere, defendant

JOHN J. MERLA

and others knowingly and willfully devised and intended to devise a scheme and artifice to defraud Keyport and its citizens of the right to defendant JOHN J. MERLA's honest services in the affairs

of the Keyport government by means of materially false and fraudulent pretenses, representations, and promises.

4. The object of the scheme and artifice to defraud was for defendant JOHN J. MERLA to corruptly use his position and influence in the Borough to steer Borough public contracts to CW in exchange for cash payments from CW, and to conceal from the Borough and its citizens material information – namely, defendant MERLA’s acceptance of these corrupt payments.

5. It was part of the scheme and artifice to defraud that:

a. As described in Counts 1 to 4 of this Indictment, defendant JOHN J. MERLA received a series of cash payments from CW in return for defendant MERLA’s official support and assistance in steering public contracts for the Borough to CW.

b. The corrupt payments were made in the form of cash so as not to create an audit trail, thereby concealing the existence of the payments.

c. Defendant JOHN J. MERLA thereafter attempted to steer public contracts in the Borough to CW, including the contract to perform the bulkhead repair work.

d. Defendant JOHN J. MERLA intentionally failed to disclose to the Borough Council his financial interest in CW obtaining work in Keyport, including the fact that defendant

MERLA had agreed that CW would "build in" money on the "back end" of the bulkhead job for defendant MERLA.

e. Defendant JOHN J. MERLA further concealed his financial relationship with CW by intentionally not disclosing the money that he received from CW on the Financial Disclosure Statement required to be filed annually with the State of New Jersey, Department of Community Affairs. Defendant JOHN J. MERLA was required to make disclosures of such financial receipts, but did not do so.

f. Defendant JOHN J. MERLA made efforts and ultimately succeeded in having the bulkhead project declared an emergency, so that the work could be awarded to CW without any bidding process and therefore without any other contractor being able to submit a competing bid and potentially interfere with defendant MERLA's objective to steer this business to CW.

g. With the assistance of defendant JOHN J. MERLA as well as the Councilman, CW was awarded the contract for the bulkhead work and was paid to perform that work as well as the chipping work.

Mailings

6. On or about the dates listed below, in Monmouth County, in the District of New Jersey, and elsewhere, for the purpose of executing and attempting to execute this scheme and artifice to defraud, defendant JOHN J. MERLA and others knowingly

and willfully placed and caused to be placed in a post office and authorized depository for mail, and caused to be delivered by mail according to the directions thereon, the matters and things specified below to be sent and delivered by the United States Postal Service, and took and received therefrom, the matters and things specified below:

COUNT	DATE OF MAILING	DESCRIPTION OF MAILING
6	Dec. 15, 2003	Letter from engineering firm to Keyport Borough Administrator stating that at the request of the Mayor and Council, the firm performed a follow-up inspection of the bulkhead and recommended that the bulkhead issues be addressed on an emergent basis
7	Jan. 12, 2004	Letter from Borough Clerk to CW stating that the bulkhead contract had been awarded to CW; enclosing contract and municipal resolution

In violation of Title 18, United States Code, Sections 1341, 1346, and 2.

COUNT 8
OBTAINING THINGS OF VALUE FROM WASTE CONTRACTOR
INDUCED BY FEAR OF ECONOMIC HARM AND
UNDER COLOR OF OFFICIAL RIGHT

1. At all times relevant to Count 8 of this
Indictment:

a. Before he was elected mayor, defendant JOHN J. MERLA was a member of the Keyport Borough Council (the "Council"). As a member of the Council, defendant MERLA was in a position to influence, and did influence, official action on behalf of Keyport in the hiring and firing of contractors performing services for Keyport.

b. The Borough of Keyport purchased goods and services in interstate commerce.

c. A solid-waste disposal company located in Avenel, New Jersey (the "Company") provided solid-waste collection and disposal services to Keyport and its residents. Specifically, pursuant to a contract with Keyport, the Company was required to, and did, pick up certain trash from Keyport residents and certain Keyport commercial establishments. The Company then delivered the trash to a local disposal facility. To conduct its business operations, the Company purchased and leased equipment that traveled in interstate commerce.

d. The Company was owned and operated by an individual hereafter referred to as "the Owner."

2. Shortly after the inception of its contract with

the Company in May 2001, Keyport began receiving complaints concerning the Company's service and job performance. Those complaints caused the Council to consider terminating its contract with the Company, or taking other punitive measures available under the contract.

The Extortionate Scheme

3. From in or about May 2001 to in or about October 2002, defendant JOHN J. MERLA sought, accepted, and agreed to accept from the Owner cash and a variety of waste-disposal services to which defendant MERLA was not entitled. Defendant MERLA obtained those things of value from the Owner by assuring the Owner that, in return, defendant MERLA would be an advocate for the Company with the Council and would attempt to persuade the Council not to take actions adverse to the Company, such as terminating the contract or reporting the Council's complaints to the Company's bonding company. Defendant MERLA also implicitly threatened the Owner concerning what could happen to the Company's bond and contract with Keyport if the Company did not have defendant MERLA's support.

4. It was part of the extortionate scheme that in late 2001, defendant JOHN J. MERLA sought and obtained a cash payment from the Owner, in the amount of approximately \$1,000.

5. It was further part of the extortionate scheme that defendant JOHN J. MERLA instructed the Owner to pick up and

dispose of trash from a variety of sources personally connected to defendant MERLA. Because such service was not included in the Company's contract with Keyport, such trash should have been collected by a privately hired company. Instead, the Company collected the trash on its Keyport routes. The resulting weight-based disposal fees charged by the disposal facility were paid by the Borough of Keyport. Examples of such trash service included the following:

- a. Trash collection at multiple political fundraising and campaign events organized by defendant MERLA;

- b. Periodic collection of high-volume, bulk construction waste resulting from work performed at various locations in Keyport and elsewhere by a relative of defendant MERLA's as part of that relative's construction business;

- c. Periodic collection of high-volume waste from a Keyport restaurant that was owned by defendant MERLA's family and operated by defendant MERLA and others; and

- d. Collection of bulk waste from numerous Keyport residents whom defendant MERLA referred to as "good voter[s]." Defendant MERLA instructed the Owner to inform those individuals that the collection of their trash was courtesy of defendant MERLA, and that they should not forget defendant MERLA at election time.

6. It was further part of the extortionate scheme that

defendant JOHN J. MERLA counseled the Owner to make the above pick-ups appear to be part of the Company's regular Keyport collection routes. That instruction came in response to the Owner reminding defendant MERLA that the weight-based fees charged by the disposal facility and paid by the Borough of Keyport would be greater as a result of the Company's collection of this trash.

The Charge

7. From in or about May 2001 to in or about October 2002, in Monmouth County, in the District of New Jersey, and elsewhere, defendant

JOHN J. MERLA

knowingly and willfully obstructed, delayed, and affected interstate commerce by extortion -- that is, obtaining payments and other benefits from the Owner with his consent, (a) induced by wrongful use of fear, and (b) under color of official right.

In violation of Title 18, United States Code, Sections 1951(a) and 2.

A TRUE BILL

FOREPERSON

CHRISTOPHER J. CHRISTIE
UNITED STATES ATTORNEY

Criminal No. 05-709

***UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY***

UNITED STATES OF AMERICA

V.

JOHN J. MERLA

SUPERSEDING INDICTMENT FOR

18 U.S.C. §§ 666, 1341, 1346, 1951 & 2

CHRISTOPHER J. CHRISTIE

U.S. ATTORNEY NEWARK, NEW JERSEY

MARK J. MCCARREN - (973) 645-2867

RACHAEL A. HONIG - (973) 645-2777

ASSISTANT U.S. ATTORNEYS

NEWARK, NEW JERSEY
