NBA, MLB Betting Indictments: Slam Dunks Or Strikeouts?

By **Adam Ford, Anjula Prasad and Patrick Mattina** (December 11, 2025)

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The indictment unsealed on Oct. 23 against NBA player Terry Rozier, former NBA player and assistant coach Damon Jones, and four bettors for allegedly wagering on NBA games based on nonpublic information appears to have been the opening tip of the current U.S. Department of Justice's efforts to police sports betting.[1]

The indictment for wire fraud conspiracy and money laundering conspiracy, U.S. v. Earnest in the U.S. District Court for the Eastern District of New York, contains numerous allegations that nonpublic information was shared with and used by bettors, including information about phantom injuries that would be suffered by players, teams deciding to bench starting players to increase their chances of obtaining better draft picks, and information about a superstar's real injuries.

On Nov. 9, the DOJ unsealed another indictment for sports betting in the Eastern District of New York, this time involving the MLB. This indictment, U.S. v. Clase de la Cruz, charges two pitchers for the Cleveland Guardians — Emmanuel Clase de la Cruz and Luis Leandro Ortiz Ribera — with wire fraud conspiracy, honest services wire fraud conspiracy, conspiracy to influence sports contests by bribery, and money laundering conspiracy.[2]

The MLB indictment contains allegations that the two pitchers conspired with two bettors by informing them in advance of the specific pitches they would throw during games so that the bettors could place wagers on the pitchers' prop bets. The two bettors were not charged in the MLB indictment, but were listed as co-conspirators.

Though it's not yet clear whether proving the charges in the NBA and MLB indictments will be a layup or an easy strikeout for the government if any of the defendants take their cases to trial, the NBA indictment in particular raises questions about when members of the public bet based on nonpublic or inside information.

If a bettor obtains information through their own investigation, observations or even eavesdropping, is that nonpublic information? In other words, how long is the arm of the law in this arena?

One can imagine a variety of hypotheticals where individuals obtain and place bets based on information that is not widely known. What if the doorman at a superstar's apartment building sees the player come home late the night before a game, looking the worse for wear, or sees the player's doctor make an unexpected visit late at night?

Either scenario could lead the doorman to bet the under on the player's prop bets for the upcoming game — i.e., bet that the player would underperform — or bet against the player's team.

What if the doorman tells his friends what he saw, and they, too, place bets based on that information? What if those friends then sell that information to others who place bets? Or what if they repeat that information at a diner, and people in the next booth overhear and place bets? Just how far would liability extend?

Whether any of these individuals could be subject to criminal liability largely depends on whether the information is considered nonpublic or inside information. Since the U.S. Supreme Court's 2018 decision in Murphy v. NCAA,[3] which paved the way for states to legalize sports betting, Congress has yet to pass legislation defining what constitutes nonpublic information in relation to sports betting.

Since the industry is currently regulated on a state-by-state basis, the answer to whether any of the bettors in the above hypotheticals or other hypotheticals could be criminally liable will turn on the location of the bettor or sporting event for state charges. For federal charges, it would hinge on whether the government can fit the bettor's behavior within the federal wire fraud statute, as attempted in the NBA indictment.

While states have enacted criminal statutes in relation to sports betting, few have specifically addressed members of the public placing bets based on nonpublic or inside information.[4] The states that have criminalized betting on such information have taken a broad approach.

Under Tennessee law, for example, it is a misdemeanor for anyone to place bets based on "information that is known exclusively" to a player, coach, referee, owner, employee or union official.[5]

And, given the prevalence of college sports there, Tennessee also explicitly prohibits a student or employee of a university from placing bets based on material nonpublic information, defined as "information that has not been disseminated publicly" about a player or team. This definition of material nonpublic information includes confidential information about medical conditions and treatment, eligibility, discipline, game strategies, and information gleaned from team practices.[6]

Other states, such as Michigan[7] and Mississippi,[8] have taken an approach similar to Tennessee's, making it illegal to place bets based on information that is not available to the general public. However, neither Michigan nor Mississippi law specifically defines when information is deemed not available to the general public.

The federal government has sought to fill the enforcement gap created by this state-by-state approach by utilizing the federal wire fraud statute — Title 18 of the U.S. Code, Section 1434 — to pursue individuals who have allegedly placed bets based on nonpublic information.

However, while wire fraud charges have been brought against referees, gamblers and players involved in sports betting scandals — most notably against former NBA referee Tim Donaghy and his co-conspirators in 2007, U.S. v. Donaghy;[9] and against former NBA player Jontay Porter in 2024, U.S. v. Porter,[10] both in the Eastern District of New York — those cases were resolved via plea agreements.

So the government's use of the wire fraud statute to prosecute individuals involved in placing bets based on nonpublic information has not been tested recently. By using the statute to pursue such individuals, the government may be seeking to fit a square peg into a round hole.

In the U.S. Court of Appeals for the Second Circuit, there are three essential elements to prove wire fraud: (1) a scheme to defraud; (2) money or property as the object of the scheme; and (3) the use of wires to further the scheme.[11]

In relation to the first element, most relevant here, the government must prove: (1) the existence of a scheme to defraud; (2) that the defendant had a conscious, knowing intent to defraud and intended some harm to the victim; and (3) the materiality of the defendant's misrepresentations.[12]

For the first element — the existence of a scheme to defraud — the government must prove that the defendant engaged in fraudulent or deceptive means, such as making misrepresentations or concealing information.[13]

The government can establish that the defendant made an affirmative misrepresentation through the defendant's conduct — like if the defendant agrees to a contract with the intention of not honoring it.[14] A scheme to defraud can also be established by proving the defendant failed to disclose material information that they had a duty to disclose, which can arise, as the Second Circuit noted in its 2000 decision in U.S. v. Autuori, if the "defendant makes partial or ambiguous statements that require further disclosure in order to avoid being misleading,"[15]

As for the requisite fraudulent intent, this can be "inferred from the scheme itself" if "the necessary result of the ... scheme is to injure others," as the Second Circuit articulated in its 1994 decision in U.S. v. D'Amato.[16] It can also be proven through circumstantial evidence, including that the defendant made false representations to the victim with the knowledge that they were false.[17]

For materiality, the government can meet its burden by showing that the misrepresentations had a natural tendency to influence the victim to part with money or property.[18]

Finding individuals guilty under state laws or the federal wire fraud statute for betting based on what they saw or heard about a player, like in the above hypotheticals, may require prosecutors to put on a full-court press. Both state and federal prosecutors will likely need to prove that the information learned about the player was not available to the public, and therefore amounted to placing bets based on inside information.

This could be a tough sell to juries, especially if a member of the public learned the information through their own observations, rather than being tipped off by a player, coach, referee or someone on the inside. Moreover, proving the information was nonpublic and that the bettors knew they were betting based on such information will be critical to the government's ability to prove a scheme to defraud and that the bettors had the requisite intent.

The fact that the wire fraud statute carries a potential prison sentence of 20 years could potentially add to the difficulty federal prosecutors face in seeking to prove a scheme to defraud.

It will be interesting to see what the government relies on to prove its allegations in the NBA indictment that the defendants made materially false and fraudulent representations to the sports betting companies. It may rely on the defendants knowing that they possessed nonpublic information, and still agreeing to the betting companies' terms and conditions, which explicitly prohibit betting based on such information — allegations explicitly mentioned in both the NBA and MLB indictments.[19]

In relation to the above hypotheticals, such reliance would not appear sufficient to establish criminality under the wire fraud statute.

As sports betting advertisements are now nearly as ubiquitous as prescription drug commercials, the NBA and MLB indictments are likely to be the first of many for betting based on nonpublic information. Time will tell if the government's efforts turn out to be nothing but net or a home run.

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[1] https://www.justice.gov/usao-edny/media/1416611/dl.

[2] https://www.justice.gov/usao-edny/media/1417041/dl?inline.

[3] 584 U.S. 453 (2018).

[4] See Alyssa Telles Wyatt, Protecting America's Favorite Pastime: An Analysis of Match-Fixing Laws in States with Legal Sports Gambling, 56 Loy. L.A. L. Rev. 1431 (2023).

[5] Tenn. Code Ann. § 4-49-112(a)(6).

[6] Id. at (a)(13); Tenn. Code Ann. § 4-49-130(d).

[7] Mich. Comp. Laws Ann. § 432.413(1)(i) (making it a misdemeanor to place a wager "after acquiring knowledge, not available to all players, of the outcome of the athletic event or any event that affects the outcome of the athletic event….").

[8] Miss. Code Ann. § 75-76-301(b) (making it a felony to place a wager "after acquiring knowledge, not available to all players, of the outcome of the game or any event that affects the outcome of the game or that is the subject of the bet….").

[9] Donaghy was charged with conspiracy to commit wire fraud and conspiracy to transmit wagering information, pled guilty to both charges, and was sentenced to 15 months' imprisonment (1:07-CR-00587). Donaghy's co-conspirators, James Battista and Thomas Martino, were both charged with conspiracy to commit wire fraud and conspiracy to transmit wagering information (1:08-CR-00086). Battista pled guilty to conspiracy to transmit wagering information and was sentenced to 15 months' imprisonment, and Martino pled

guilty to conspiracy to commit wire fraud and was sentenced to one year and one day imprisonment.

[10] Porter was charged with conspiracy to commit wire fraud, pled guilty, and is currently scheduled to be sentenced in December 2025 (1:24-CR-00270).

[11] Fountain v. U.S., 357 F.3d 250, 255 (2d Cir. 2004).

[12] See U.S. v. Pierce, 224 F.3d 158, 165 (2d Cir. 2000); U.S. v. Guadagna, 183 F.3d 122, 129 (2d Cir. 1999).

[13] U.S. v. Autuori, 212 F.3d 105, 118 (2d Cir. 2000); But see U.S. v. Trapilo, 130 F.3d 547, 550 n. 3 (2d Cir. 1997) (stating that a misrepresentation or omission is not a necessary element of a "scheme to defraud" under the wire fraud statute if the government only alleges dishonest as the meaning of a "scheme to defraud" is "measured by a nontechnical standard. It is a reflection of moral uprightness, of fundamental honesty, fair play and right dealing in the general [and] business life of members of society"; U.S. v. Martin, 411 F. Supp. 2d 370, 373 (S.D.N.Y. 2006) (finding that the defendant's scheme to defraud did not involve any affirmative misrepresentations but violated "fundamental notions of honesty, fair play and right dealing and is therefore an act within the meaning of a scheme to defraud.").

[14] U.S. v. Shellef, 732 F.Supp.2d 42, 67-71 (E.D.N.Y. 2010).

[15] Autori, 212 F.3d at 118.

[16] U.S. v. D'Amato, 39 F.3d 1249, 1257 (2d Cir. 1994).

[17] U.S. v. Jabar, 19 F.4th 66, 76 (2d Cir. 2021).

[18] U.S. v. Johnson, 945 F.3d 606, 614 (2d Cir. 2019).

[19] For example, FanDuel, which appears to be one of the betting companies mentioned in the Indictment, has terms and conditions applicable to all bettors and state that when placing a bet an individual represents, among other things, that they are not misusing "Inside Information," which is defined as "any information which has not been made public and, if it were made public, would be likely to have a material effect on the relevant market relating to the event."