

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals for the Second Circuit,
2 held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the
3 City of New York, on the 10th day of September, two thousand nineteen.
4

5 PRESENT: JOHN M. WALKER, JR.,
6 RAYMOND J. LOHIER, JR.,
7 SUSAN L. CARNEY,
8 *Circuit Judges.*

9 -----
10 UNITED STATES OF AMERICA,

11
12 *Appellee,*

13
14 v.

No. 18-1685-cr

15
16 LOUIS F. PETROSSI,

17
18 *Defendant-Appellant.**
19
20 -----

* The Clerk of Court is respectfully directed to amend the official caption as shown above.

1 FOR APPELLANT:

KENNETH A. CARUSO
(Christopher D. Volpe,
Michael Y. Lu, Katrina Fetsch,
on the brief), White & Case LLP,
New York, NY.

7 FOR APPELLEE:

MARK E. BINI, Assistant United
States Attorney (Susan
Corkery, Lauren H. Elbert,
Assistant United States
Attorneys, *on the brief*), for
Richard P. Donoghue, United
States Attorney for the Eastern
District of New York,
Brooklyn, NY.

16 Appeal from a judgment of the United States District Court for the Eastern
17 District of New York (Brian M. Cogan, *Judge*).

18 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,
19 AND DECREED that the judgment of the District Court is AFFIRMED.

20 Louis F. Petrossi appeals from a judgment of the District Court (Cogan, L)
21 convicting him, after a jury trial and denial of his motion for a new trial, of one
22 count of securities fraud in violation of 15 U.S.C. § 78j(b) and 15 U.S.C. § 78ff, one
23 count of conspiracy to commit securities fraud in violation of 18 U.S.C. § 371, one
24 count of conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349, and

1 one count of conspiracy to commit money laundering in violation of 18 U.S.C. §
2 1956(h). On appeal, Petrossi argues principally that: (1) his conviction was
3 predicated on an invalid legal theory; (2) the District Court erroneously
4 instructed the jury as to willfulness; and (3) the District Court made two
5 evidentiary errors. We assume the parties' familiarity with the underlying facts
6 and the record of prior proceedings, to which we refer only as necessary to
7 explain our decision to affirm.

8 1. Invalid Legal Theory

9 Petrossi first contends that he was impermissibly prosecuted on a theory of
10 fraud by omission that required that he have a duty to disclose. But the
11 Government did not argue and the District Court did not instruct that Petrossi
12 could be convicted for "simply fail[ing] to disclose information." United States
13 v. Skelly, 442 F.3d 94, 97 (2d Cir. 2006); see United States v. Szur, 289 F.3d 200,
14 208–10 (2d Cir. 2002). Instead, the Government relied repeatedly at trial on the
15 theory that certain statements that Petrossi made were either half-truths or false
16 statements. The jury instructions likewise explained that Petrossi's omission of
17 certain facts must have made his affirmative representations to investors "under

1 the circumstances misleading.” Dist. Ct. Dkt. No. 290, at 1128:22–24; see United
2 States v. Autuori, 212 F.3d 105, 118 (2d Cir. 2000) (“[I]t is just as unlawful to
3 speak half truths or to omit to state facts necessary to make the statements made,
4 in light of the circumstances under which they were made, not misleading.”
5 (quotation marks omitted)). We have long recognized that half-truths, like false
6 statements, can be actionable misrepresentations in the securities law context, see
7 In re Vivendi, S.A. Sec. Litig., 838 F.3d 223, 239–40 (2d Cir. 2016), and Petrossi
8 does not argue to the contrary. We therefore reject Petrossi’s claim that he was
9 convicted based on an invalid legal theory.

10 2. Jury Instruction

11 Petrossi next argues that the District Court’s jury instruction regarding
12 willfulness was erroneous. In United States v. Kaiser, however, we approved
13 substantially similar jury instructions defining willfulness in the securities fraud
14 context. 609 F.3d 556, 567–70 (2d Cir. 2010) (willfulness generally means that a
15 defendant knew the statements were “false and fraudulent,” made “with intent
16 to create a deception,” and “contrary [to] the idea of mistake or good faith”

1 (quotation marks omitted)). We therefore reject Petrossi's challenge to the
2 District Court's jury instructions.

3 3. Evidentiary Rulings

4 Petrossi also challenges two evidentiary rulings of the District Court.

5 First, Petrossi challenges the District Court's decision to admit evidence of his
6 prior deception of another victim on the ground that the evidence was
7 "inextricably intertwined" with the charged offense. App'x 50. But the
8 District Court did not abuse its discretion in reaching this decision, since the jury
9 could have considered Petrossi's misrepresentation to an investor regarding the
10 purchase price of ForceField stock as direct evidence of the fraudulent conduct of
11 which Petrossi was convicted. See United States v. Carboni, 204 F.3d 39, 44 (2d
12 Cir. 2000). Second, Petrossi challenges the District Court's exclusion of an email
13 exchange between Petrossi and two ForceField executives suggesting that
14 Petrossi received ForceField stock in exchange for his efforts to promote it. But
15 the District Court did not abuse its discretion in excluding the exhibit as
16 irrelevant and on the ground that it contained inadmissible hearsay to which no
17 exception applied. In any event, any error in excluding the exhibit or admitting

1 testimony of Petrossi's prior deception was harmless given the strength of the
2 Government's case.

3 We have considered Petrossi's remaining arguments and conclude that
4 they are without merit. For the foregoing reasons, the judgment of the District
5 Court is AFFIRMED.

6 FOR THE COURT:
7 Catherine O'Hagan Wolfe, Clerk of Court