

In the
United States Court of Appeals
For the Seventh Circuit

No. 19-3388

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ETHEL SHELTON,

Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Indiana, Hammond Division.
No. 2:14-cr-00129-JVB-JEM-2 — **Joseph S. Van Bokkelen**, Judge.

ARGUED NOVEMBER 13, 2020 — DECIDED MAY 14, 2021

Before FLAUM, ROVNER, and BRENNAN, *Circuit Judges*.

ROVNER, *Circuit Judge*. Demoted, disparaged, and deprived of a free government car, Stafford Garbutt decided that he could no longer tolerate what he believed to be criminal conduct by his boss and co-workers, conduct that he himself had been engaging in for more than ten years. After his anonymous letters to a local newspaper and to the United

States Attorney's office accusing his former friend and boss of official misconduct failed to garner any response, he approached the United States Attorney's office in person with his story. That office directed him to the FBI, where he began a partnership with an agent who eventually directed him to conduct warrantless searches of his co-workers' offices. Garbutt's actions ultimately ensnared not only his intended target, Calumet Township Trustee Mary Elgin, but also Elgin's administrative assistant, Ethel Shelton, the defendant here. After Elgin took a plea deal, a jury convicted Ethel Shelton of conspiracy to commit wire fraud and conspiracy to commit honest services wire fraud related to her actions as an employee of the Calumet Township Trustee's Office. Shelton learned mid-trial that the FBI agent had directed Garbutt to conduct warrantless searches of her office. Although the district court tried to mitigate any damage by allowing Shelton to move post-trial for relief, the court ultimately denied her motion. We reverse and remand.

I.

Mary Elgin first ran for the post of Trustee of Calumet Township in 2002. The Trustee's Office was charged with helping people in the community in need of assistance in areas such as jobs, food, housing, and the like. Elgin had previously been a union official in the United Steelworkers of America, and she met Stafford Garbutt at an international convention for the union in 1980. Garbutt, who holds dual citizenship in Belize and the United States, was impressed with Elgin and began to help her with campaigns for union leadership posts. When Elgin decided to run for the position of Trustee of Calumet Township in 2002, she contacted Garbutt and asked

him to help. Garbutt, who was living in Belize at the time and working as an assistant to the Deputy Prime Minister of that country, agreed to help and immediately drafted a program for her election. He moved from Belize (where he had a wife and daughter) into Elgin's home in Gary, Indiana, where he remained for several months. He created a political action committee for her, developed newsletters and flyers, and worked on all aspects of her campaign. That campaign marked the first of Elgin's three successful bids for the position of Trustee, a post she held for twelve years. Garbutt conceded at trial that he had an intimate relationship with Elgin (although he denied it was sexual in nature), and admitted that they traveled and socialized together. After Elgin's first successful campaign for Trustee, she hired Garbutt to work at the Trustee's Office and allowed him to write his own job description and essentially name his own salary.

The Trustee's Office was organized with Elgin at the top, and several deputies reporting to her, including a chief deputy who acted as the principal administrator for the Office. The deputies supervised the various departments that made up the Trustee's Office. Elgin hired Garbutt to work as her "executive aide" (a position that did not previously exist in that Office) at a salary of \$60,000 per year. Only Elgin herself and the chief deputy earned higher salaries. Garbutt had insisted that he would not be responsible to anyone but the Trustee and that the chief deputy could not direct him "in any manner, shape, or form." R. 257, at 283. Garbutt's official responsibilities included public relations, speech writing, newsletter editing, and interacting with local and state officials on issues pertinent to the Trustee's Office. Although he was not a deputy, Elgin

granted him all of the perks and privileges of being a deputy, including a government car for his exclusive use, and participating in meetings that Elgin held with the deputies. Unlike the deputies, he had no supervisory responsibilities.

From the very beginning of his job, Garbutt's unofficial duties included Elgin's political campaign work. Because he understood that he should not perform political work at the Township Office, he initially completed these tasks at his home. But he soon began to also engage in political tasks at the office, where blurring the line between political work and office duties was the norm under Elgin's leadership. Ironically, Garbutt had drafted in 2005 the official Trustee's Office policy prohibiting political activities during Township hours and on Township property. Each employee, including Garbutt, was required to read and sign that policy. The policy warned that violations would lead to disciplinary action up to and including termination.

In addition to Garbutt, Elgin also hired her friend Ethel Shelton as a financial clerk, and in 2006, elevated her to the post of administrative assistant. Shelton's job responsibilities included the usual secretarial tasks such as answering phones, filing, handling mail, and assisting clients at Elgin's direction, especially when Elgin was unavailable to do so herself. Although Elgin directed Shelton to perform secretarial tasks for Garbutt whenever he asked for assistance, Garbutt did not supervise Shelton and he rarely made use of her services.

Like Garbutt, Shelton had unofficial responsibilities related to Elgin's campaign work. Elgin held three fundraisers a year: the Extravaganza event, with ticket prices of \$100 each; the

Prayer Breakfast, run by Women for Elgin, with more modestly priced \$30 tickets; and a Mardi Gras event held by a men's group known as Elgin's Eagles, with \$15 tickets. Tickets for these events were sold to the public at large, to Township vendors, and to employees of the Trustees' Office. Elgin determined how many tickets each employee would be expected to purchase based on each employee's salary, and Shelton packaged the tickets (sometimes with Garbutt's help) into envelopes labeled with each employee's name. Elgin directed the deputies to distribute the tickets to the employees who reported to them. The prior Trustee had expected employees to provide a 2% kickback of their salaries in support of his campaigns; Elgin abolished that program and instead sought "voluntary" ticket purchases from employees. Many employees bought the tickets or sold them to others, and some also volunteered to work at Elgin's campaign events. Payments for the tickets were sometimes returned to the deputies, and sometimes given directly to Shelton or left on her office chair. At Elgin's direction, Shelton kept track of ticket purchases, noting names and amounts for campaign reporting purposes, and for Elgin's use otherwise. During Elgin's terms in office, a property tax cap resulted in severe budget cuts to the Office, and consequently, the number of employees working in the Trustee's Office was significantly reduced. Some employees testified that they purchased the tickets in the belief that support of Elgin's campaigns would spare them from the layoffs occasioned by budgetary constraints.

As Elgin completed her third and final term as Trustee, Shelton and her co-defendant Alex Wheeler, who was a deputy, both decided to run for positions on the Township

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