

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

United States v. Clemente

640 F.2d 1069 (2d Cir. 1981) · Decided February 26, 1981

SUMMARY

The opinion reviews convictions arising from a racketeering enterprise controlling waterfront businesses in New York and New Jersey. It addresses whether the jury was properly instructed on Hobbs Act extortion, whether the evidence sufficiently established wrongful use of economic fear, and whether a defendant aided and abetted the extortion scheme. The court rejects the challenged jury instructions and sufficiency-of-the-evidence arguments discussed in the excerpt.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Meskill; Feinberg; Friendly
JURISDICTION	Federal
DECIDED	February 26, 1981
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from judgments of conviction entered in the United States District Court for the Southern District of New York after a twelve-week jury trial before Judge Sand.
STANDARD OF REVIEW	The court reviewed jury verdicts for substantial evidence in the light most favorable to the Government (<i>Glasser v. United States</i> , 315 U.S. 60, 80 (1942)); evidentiary rulings for abuse of discretion; and legal challenges de novo when preserved, with plain error for unpreserved objections.
PRECEDENTIAL VALUE	published
PARTIES	Michael Clemente, Anthony Fiumara, Frank Buzzanca, Vincent Colucci, Carol Gardner, Joseph Copolla, and William Swanton v. United States of America

TOPICS

- criminal procedure
- statutory interpretation
- conspiracy
- evidence
- impeachment
- character evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court properly instructed the jury on the wrongfulness element of extortion under the Hobbs Act.
2. Whether sufficient evidence supported Clemente's Hobbs Act extortion convictions.
3. Whether the district court's aiding and abetting charge adequately instructed the jury on Swanton's required purpose.
4. Whether sufficient evidence supported Swanton's aiding and abetting convictions.
5. Whether a variance existed between the indictment and the proof at trial on Clemente's Taft-Hartley convictions.
6. Whether RICO's enterprise element encompasses wholly illegitimate enterprises and whether the RICO conspiracy count was unconstitutionally vague.
7. Whether the district court abused its discretion in permitting the cross-examination and impeachment of defendant Gardner.

HOLDINGS

1. The charge correctly instructed the jury that the use of fear of economic loss to obtain property to which a defendant has no lawful claim constitutes wrongful use under the Hobbs Act.
2. The evidence was sufficient to sustain the convictions; the government proved Clemente used fear of economic loss to obtain money to which he had no lawful claim.
3. The charge properly required the jury to find that Swanton sought by his action to make the scheme succeed with respect to each payment, and was not impermissibly general.
4. The evidence was sufficient; Swanton's history of similar conduct and his direct action in arranging the kickback scheme supported the conviction.
5. There was no variance; Clemente could be convicted of aiding and abetting the receipt of illegal payments by Buzzanca even if he also aided and abetted the making of those payments.
6. RICO's 'enterprise' includes both legitimate and illegitimate enterprises, and the conspiracy count was not vague because it sufficiently described the enterprise and the racketeering activity.
7. No abuse of discretion; the cross-examination was proper under Rule 608(b) and the prior conviction was admissible under Rule 609(a). Any error in admitting the loan applications was harmless.

KEY QUOTATIONS

“Mike, I'm Sonny [Montella]. Gerry [Swanton] told me to come down. I'm with Quin Lumber and I'm going to be doing the carpentry work down there. CLEMENTE: I hope you do the right thing. I hope you are not cheap. MONTELLA: I'm going to give you 500 a month. CLEMENTE: Okay. If you have any problems down there ... let me know. Go out and make money.” (1073)

“Wrongful means that in order for you to find that any of the acts of extortion alleged in these counts were, in fact, committed, you must find beyond a reasonable doubt that the defendant or defendants you are considering had no lawful right to the property obtained, and that the property was obtained because of the victim's fear of economic loss. If you find that threats were made or that fear was reasonably aroused, and if you find that the purpose of the defendant you are considering was to obtain money for himself or others to which they were not entitled, then I instruct you that the element of wrongfulness has been established.” (1077)

“His life won't be worth two cents. In twenty-four hours he'll be gone.” (1078)

“in order to find that a defendant was an aider and abettor, you must find beyond a reasonable doubt that he had an interest in the crime charged, that is, that he in some way knowingly associated himself with the criminal act alleged, that he participated in it as something he wished to bring about, that he sought by his action to make it succeed.” (1079)

FACTUAL BACKGROUND

The government's evidence portrayed Michael Clemente as the ringleader of a criminal enterprise that controlled labor, shipping, and ship-servicing on the New York and New Jersey waterfront through its domination of ILA locals. The enterprise extorted money from shipping companies and ship-servicing contractors by threatening work stoppages and economic harm. The government's principal witness, William Montella, testified that he made monthly cash payoffs to Clemente and others to obtain and retain contracts. Montella also detailed the enterprise's involvement in the Netumar, Concordia Line, and Chilean Line accounts, and tape recordings corroborated the extortionate demands and power structure.

PROCEDURAL HISTORY

A 213-count indictment charged the defendants with extortion under the Hobbs Act, receiving bribes under the Taft-Hartley Act, RICO violations, tax evasion, and false declarations before a grand jury. The jury convicted on various counts. The defendants appealed, challenging the Hobbs Act jury charge, sufficiency of the evidence, the aiding and abetting charge, alleged variance in Taft-Hartley counts, the scope of RICO's enterprise element, and the admission of impeachment evidence against Gardner.

DISPOSITION

affirmed

CASES CITED

- United States v. Enmons, 410 U.S. 396 (1973)
- Cupp v. Naughten, 414 U.S. 141 (1973)
- United States v. Cerilli, 603 F.2d 415 (3d Cir. 1979), cert. denied, 444 U.S. 1043 (1980)
- United States v. Brecht, 540 F.2d 45 (2d Cir. 1976), cert. denied, 429 U.S. 1123 (1977)
- United States v. Tolub, 309 F.2d 286 (2d Cir. 1962)
- Glasser v. United States, 315 U.S. 60 (1942)

- Hamling v. United States, 418 U.S. 87 (1974)
- United States v. Peoni, 100 F.2d 401 (2d Cir. 1938)
- Nye & Nissen v. United States, 336 U.S. 613 (1949)
- United States v. Stanchich, 550 F.2d 1294 (2d Cir. 1977)
- United States v. Mariani, 539 F.2d 915 (2d Cir. 1976)
- United States v. Garguilo, 310 F.2d 249 (2d Cir. 1962)
- United States v. Green, 350 U.S. 415 (1956)
- United States v. Trotta, 525 F.2d 1096 (2d Cir. 1975), cert. denied, 425 U.S. 971 (1976)
- United States v. Provenzano, 334 F.2d 678 (3d Cir.), cert. denied, 379 U.S. 947 (1964)
- United States v. Altese, 542 F.2d 104 (2d Cir. 1976), cert. denied, 429 U.S. 1039 (1977)
- United States v. Errico, 635 F.2d 152 (2d Cir. 1980)
- United States v. Mannino, 635 F.2d 110 (2d Cir. 1980)
- United States v. Sutton, 642 F.2d 1001 (6th Cir. 1980)
- United States v. Turkette, 632 F.2d 896 (1st Cir. 1980), cert. granted, 101 S.Ct. 938 (1981)
- United States v. Anderson, 626 F.2d 1358 (8th Cir. 1980)
- United States v. Diecidue, 603 F.2d 535 (5th Cir. 1979), cert. denied, 445 U.S. 946 (1980)
- United States v. Hawes, 529 F.2d 472 (5th Cir. 1976)
- Henderson v. Kibbe, 431 U.S. 145 (1977)
- United States v. Vila, 599 F.2d 21 (2d Cir.), cert. denied, 444 U.S. 837 (1979)
- United States v. Benedetto, 571 F.2d 1246 (2d Cir. 1978)
- United States v. King, 560 F.2d 122 (2d Cir.), cert. denied, 434 U.S. 925 (1977)
- United States v. Graham, 102 F.2d 436 (2d Cir.), cert. denied, 307 U.S. 643 (1939)
- United States v. Hockridge, 573 F.2d 752 (2d Cir.), cert. denied, 439 U.S. 821 (1978)
- United States v. Provenzano, 620 F.2d 985 (3d Cir. 1980)