UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

United States v. O'Grady

742 F.2d 682 (2d Cir. 1984) · No. No. 782, Docket 82-1344 · Decided July 12, 1984

SUMMARY

The en banc Second Circuit held that extortion under color of official right under the Hobbs Act requires proof that a public official wrongfully used his office to induce the giving of benefits. Mere acceptance of unsolicited benefits, even with knowledge that they were given because of the official's position, was insufficient. The court vacated the panel decision, reversed Edward O'Grady's conviction because of plain error in the jury instruction, and remanded for a new trial.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Meskill, Circuit Judge; Feinberg, Chief Judge; Lumbard, Circuit Judge; Kaufman, Circuit Judge; Mansfield, Circuit Judge; Oakes, Circuit Judge; Van Graafeiland, Circuit Judge; Newman, Circuit Judge; Kearse, Circuit Judge; Cardamone, Circuit Judge; Pierce, Circuit Judge; Winter, Circuit Judge; Pratt, Circuit Judge
JURISDICTION	Federal
DECIDED	July 12, 1984
DOCKET	No. 782, Docket 82-1344
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a judgment of conviction entered after a jury trial in the United States District Court for the Eastern District of New York. A divided Second Circuit panel had affirmed, but the court reheard the case en banc, vacated the panel opinion, reversed the conviction, and remanded for a new trial.
STANDARD OF REVIEW	Plain-error review of the jury instructions; the court also reviewed the legal sufficiency of the Hobbs Act charge de novo.
PRECEDENTIAL VALUE	Published en banc federal appellate opinion; binding Second Circuit precedent at the time of decision, subject to subsequent Supreme Court treatment.
PARTIES	Edward O'Grady v. United States of America

TOPICS

criminal procedure · statutory interpretation · appellate procedure · standard of review · plain meaning rule

PRACTICE AREAS

criminal law · federal criminal procedure · Hobbs Act extortion · public corruption · appellate procedure

QUESTIONS PRESENTED

1. Whether extortion under color of official right under the Hobbs Act requires proof that the public official wrongfully used his office to induce or obtain the benefits.
2. Whether the district court committed reversible plain error by instructing the jury that it could convict based on the official's mere acceptance of benefits, knowledge that the benefits were motivated by his office, and the absence of proof that he requested, demanded, or solicited them.
3. Whether the Second Circuit should abandon or overrule its prior broad interpretation of Hobbs Act extortion under color of official right.

HOLDINGS

1. Yes. Extortion under color of official right requires proof that the public official wrongfully used his office to induce or obtain benefits not due to him or his office; mere acceptance of unsolicited benefits with knowledge that the benefits were motivated by the official's position is insufficient.
2. No. The government need not prove a demand, direct solicitation, force, fear, or specific quid pro quo, but it must prove some misuse of public office that induced the benefits.
3. Yes. The jury instruction was plainly erroneous because it permitted conviction without a finding that O'Grady misused his office to induce or obtain the benefits.

KEY QUOTATIONS

> *"We hold that it does not."* (742 F.2d at 684)

> *"The conduct proscribed by the Hobbs Act is the wrongful use of public office, not merely the acceptance of benefits."* (742 F.2d at 687)

> *"Although receipt of benefits by a public official is a necessary element of the crime, there must also be proof that the public official did something, under color of his public office, to cause the giving of benefits."* (742 F.2d at 687)

> *"Thus, extortion under color of official right begins with the public official, not with the gratuitous actions of another."* (742 F.2d at 690)

> *"A new trial is necessary because the charge to the jury omitted an essential element of the offense, to wit, a finding that O'Grady misused his office to obtain benefits not due him or his office."* (742 F.2d at 692)

FACTUAL BACKGROUND

Edward O'Grady was superintendent of the Quality Control Section of the New York City Transit Authority during the R-46 subway-car project. Vendors and subcontractors involved in the project provided him with more than forty paid trips, golf outings, meals, tickets, and other benefits worth more than $34,000 over approximately nine years. O'Grady had authority to inspect components and require vendors to correct deficiencies, but the evidence showed that he generally accepted benefits that vendors voluntarily offered and did not expressly demand or solicit them.

PROCEDURAL HISTORY

O'Grady was indicted and convicted in the Eastern District of New York of extortion under color of official right in violation of the Hobbs Act. The district court sentenced him to one year of probation and a $10,000 fine. A divided panel affirmed the conviction on August 10, 1983. On en banc rehearing, the Second Circuit held that the jury charge omitted an essential element of the offense and ordered a new trial.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must conduct a new trial using a jury instruction that requires proof that O'Grady misused the power of his public office to induce or obtain benefits not due to him or his office. The en banc opinions indicated that an inference of inducement from repeated acceptance of substantial benefits may be permitted if supported by the evidence, but the court did not make that instruction mandatory by a majority holding.

CASES CITED

- United States v. Margiotta, 688 F.2d 108 (2d Cir. 1982), cert. denied, 461 U.S. 913 (1983)
- United States v. Trotta, 525 F.2d 1096 (2d Cir. 1975), cert. denied, 425 U.S. 971 (1976)
- United States v. Scacchetti, 668 F.2d 643 (2d Cir. 1982), cert. denied, 457 U.S. 1132 (1982)
- United States v. Jannotti, 673 F.2d 578 (3d Cir. 1982) (en banc), cert. denied, 457 U.S. 1106 (1982)
- United States v. Hedman, 630 F.2d 1184 (7th Cir. 1980), cert. denied, 450 U.S. 965 (1981)
- United States v. Butler, 618 F.2d 411 (6th Cir. 1980), cert. denied, 447 U.S. 927 (1980)
- United States v. Barber, 668 F.2d 778 (4th Cir. 1982), cert. denied, 459 U.S. 829 (1982)
- United States v. Dozier, 672 F.2d 531 (5th Cir. 1982), cert. denied, 459 U.S. 943 (1982)
- United States v. Mazzei, 521 F.2d 639 (3d Cir. 1975) (en banc), cert. denied, 423 U.S. 1014 (1975)
- United States v. Cerilli, 603 F.2d 415 (3d Cir. 1979), cert. denied, 444 U.S. 1043 (1980)
- United States v. Enmons, 410 U.S. 396 (1973)
- United States v. Niederberger, 580 F.2d 63 (3d Cir. 1978), cert. denied, 439 U.S. 980 (1978)
- United States v. Local 807 of International Brotherhood of Teamsters, 315 U.S. 521 (1942)
- In re Grand Jury Subpoena (Persico), 522 F.2d 41 (2d Cir. 1975)
- United States v. Culbert, 435 U.S. 371 (1978)

- United States v. Nardello, 393 U.S. 286 (1969)
- Robinson v. California, 370 U.S. 660 (1962)
- United States v. Park, 421 U.S. 658 (1975)
- Cupp v. Naughten, 414 U.S. 141 (1973)
- Neil v. Biggers, 409 U.S. 188 (1972)
- Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489 (1982)
