

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

United States v. Upshaw

United States v. Upshaw, 113 A.L.R. Fed. 757 (3d Cir. 1990) · No. No. 89-5600 · Decided February 22, 1990

SUMMARY

The Third Circuit held that a conviction under 18 U.S.C. § 1701 for obstructing the mails requires only a "measurable delay" when the delay results from an individual's unauthorized, willful conduct, rather than a "substantial delay" required in cases of authorized law enforcement activity such as mail covers. The court affirmed the defendant's conviction for taking a test parcel, retaining it overnight, and causing it to be delayed in the mail stream, rejecting the argument that the government must prove a substantial delay. The opinion distinguishes between lawful government actions that cause only insubstantial delay and improper private actions that delay the mail for illegitimate reasons.

CASE DETAILS

COURT	United States Court of Appeals for the Third Circuit
WRITING FOR THE COURT	Greenberg; Becker; Nygaard
JURISDICTION	Federal
DECIDED	February 22, 1990
DOCKET	No. 89-5600
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a conviction by a magistrate, affirmed by the district court, and then to the Third Circuit.
STANDARD OF REVIEW	Plenary review for statutory construction issues; substantial evidence review for factual sufficiency, but the court's result does not depend on the standard.
PRECEDENTIAL VALUE	Published
PARTIES	Upshaw, Allen v. United States of America

TOPICS

- criminal procedure
- appellate procedure

PRACTICE AREAS

- Criminal Law
- Postal Service
- Appellate Procedure

QUESTIONS PRESENTED

1. Whether a delay in the mail caused by unauthorized private conduct must be 'substantial' to violate 18 U.S.C. § 1701, or whether a measurable delay is sufficient.

HOLDINGS

1. A willful obstruction of the passage of the mail for an illegitimate reason violates § 1701 if the delay was measurable; a substantial delay is not required.

KEY QUOTATIONS

“[w]hoever knowingly and willfully obstructs or retards the passage of the mail, or any carrier or conveyance carrying the mail, shall be fined no more than \$100 or imprisoned not more than six months, or both.”

“the defendant 'had no right to intentionally or deliberately obstruct or delay [mail] delivery, however slight, to the correct addressee.'”

FACTUAL BACKGROUND

Upshaw was a postal truck driver. On December 17, 1987, postal officials placed a test parcel with a radio transmitter on a skid meant for a different route. Upshaw, assigned to the Nixon route, nevertheless picked up the test parcel, placed it in a bucket, and later took it from his truck. He was followed, attempted to escape, and later returned. The parcel eventually reappeared in the mail stream the next day, causing a measurable delay.

PROCEDURAL HISTORY

Upshaw was convicted by a magistrate of obstruction of the mails in violation of 18 U.S.C. § 1701. He appealed to the district court which affirmed his conviction. He then appealed to the Third Circuit.

DISPOSITION

affirmed

CASES CITED

- United States v. Schankowski, 782 F.2d 628 (6th Cir. 1986)
- Lustiger v. United States, 386 F.2d 132 (9th Cir. 1967)
- Cohen v. United States, 378 F.2d 751 (9th Cir. 1967)
- Canaday v. United States, 354 F.2d 849 (8th Cir. 1966)
- United States v. Costello, 255 F.2d 876 (2d Cir. 1958)
- United States v. Beckley, 335 F.2d 86 (6th Cir. 1964)
- United States v. Johnson, 620 F.2d 413 (4th Cir. 1980)
- United States v. Austin, 492 F. Supp. 502 (N.D. Ill. 1980)
- United States v. Kirby, 74 U.S. (7 Wall.) 482 (1869)
- United States v. Furst, 886 F.2d 558 (3d Cir. 1989)

- United States v. Williams, 850 F.2d 142 (3d Cir. 1988)

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