

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

United States v. Russell Hobson

United States v. Hobson, 893 F.2d 1267 (11th Cir. 1990) · No. Nos. 85-3517, 86-3589 · Decided February 7, 1990

SUMMARY

RICO pattern of racketeering activity – continuity requirement. On remand from the Supreme Court in light of *H.J., Inc. v. Northwestern Bell Telephone Co.*, the Eleventh Circuit held that a single drug smuggling venture involving a \$1.5 million advance payment and a subsequent demand for repayment or replacement marijuana constituted a series of acts that projected a threat of repetition, satisfying the continuity element for a RICO pattern. The court rejected the argument that an isolated act simultaneously violating two statutes cannot establish continuity, affirming the denial of Hobson’s §2255 motion and motion for new trial.

CASE DETAILS

COURT	United States Court of Appeals for the Eleventh Circuit
WRITING FOR THE COURT	GODBOLD; HILL; ESCHBACH
JURISDICTION	Federal
DECIDED	February 7, 1990
DOCKET	Nos. 85-3517, 86-3589
DISPOSITION	affirmed
PROCEDURAL POSTURE	Remand from Supreme Court for reconsideration in light of <i>H.J., Inc. v. Northwestern Bell Telephone Co.</i>
PRECEDENTIAL VALUE	Published
PARTIES	Russell Hobson v. United States of America

TOPICS

- criminal procedure
- appellate procedure

PRACTICE AREAS

- Criminal Law
- RICO

QUESTIONS PRESENTED

1. Whether an isolated act which simultaneously violates two statutes may be charged as 'two acts of racketeering activity' demonstrating the 'continuity' necessary to establish 'a pattern of racketeering activity' under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961(5).

HOLDINGS

1. The court held that the facts did not involve a single isolated act but a series of acts, including a demand for repayment, which by its nature projected into the future with a threat of repetition, thus satisfying the continuity requirement.

KEY QUOTATIONS

“The facts described above, limited to the Constellation endeavor, did not involve merely a single isolated act of paying money but rather a series of acts, including a demand for repayment of a large sum of money or delivery of marijuana to replace the load lost on the Constellation, which 'by its nature project[ed] into the future with a threat of repetition.' H.J. Inc., 492 U.S. at ----, 109 S.Ct. at 2902.” (at 1268-1269)

FACTUAL BACKGROUND

Hobson was convicted of aiding and abetting importation of a load of marijuana aboard a Constellation aircraft and aiding and abetting possession of the same load with intent to distribute. The predicate acts for the RICO count arose from this same shipment. Hobson, together with his partner Waldrop, made a \$1.5 million advance payment for the load. The Constellation was flown to Colombia, loaded with marijuana, but due to weather and mechanical problems landed in Panama City, Florida, where it was seized by federal agents. After the seizure, Hobson pressured a co-defendant to produce the marijuana or return the advance payment. The court assumed for purposes of decision that the payment related only to the Constellation shipment, not an earlier aborted DC-3 shipment.

PROCEDURAL HISTORY

The Supreme Court vacated the judgment and remanded for further consideration in light of *H.J., Inc. v. Northwestern Bell Telephone Co.* Hobson's petition for certiorari raised the issue of whether an isolated act violating two statutes can constitute two acts of racketeering activity for continuity under RICO.

DISPOSITION

affirmed

CASES CITED

- *H.J., Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989)
- *Hobson v. U.S.*, 492 U.S. 930, 109 S.Ct. 3233, 106 L.Ed.2d 581 (1989)

OPINION

PER CURIAM.

893 F.2d 1267 RICO Bus.Disp.Guide 7471 UNITED STATES of America, Plaintiff-Appellee,v.Russell HOBSON, Defendant-Appellant.Russell HOBSON, Petitioner-Appellant,v.UNITED STATES of America, Respondent-Appellee. Nos. 85-3517, 86-3589. United States Court of Appeals,Eleventh Circuit. Feb. 7, 1990. James M. Shellow, Stephen M. Glynn, Shellow, Shellow & Glynn, S.C., Milwaukee, Wis., for Hobson.

Mike Moore and Kenneth Sukhia, Asst. U.S. Attys., Tallahassee, Fla., W. Thomas Dillard, U.S. Atty., Pensacola, Fla., Ferdinand W. Bockelman, Dept. of Justice, Washington, D.C., for U.S. Appeals from the United States District Court for the Northern District of Florida.

Before GODBOLD*, HILL*, and ESCHBACH**, Senior Circuit Judges. REMAND FROM THE SUPREME COURT OF THE UNITED STATES PER CURIAM: 1 The judgment in this case was vacated by the Supreme Court and the case remanded for further consideration in the light of H.J., Inc. v. Northwestern Bell Telephone Co., 492 U.S. ----, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989). Hobson v. U.S., 492 U.S. ----, 109 S.Ct.

3233, 106 L.Ed.2d 581 (1989). The narrow issue presented by Hobson in his petition for certiorari, and restated in his brief before us on remand, is "whether an isolated act which simultaneously violates two statutes may be charged as 'two acts of racketeering activity' demonstrating the 'continuity' necessary to establish 'a pattern of racketeering activity' under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sec. 1961(5)."

2 The predicate acts relied upon for conviction of Hobson under the substantive RICO count arise in the context of his conviction under two other counts for aiding and abetting importation of a load of marijuana aboard a Constellation aircraft and aiding and abetting possession of the same load of marijuana aboard the Constellation aircraft with intent to distribute.

In his direct appeal to this court, and in his petition for certiorari to the Supreme Court, Hobson has asserted that he committed only one isolated act relating to the importation and possession counts which consisted of making (together with his partner Waldrop) a \$1.5 million advance payment for the load of marijuana aboard the Constellation, which act, he says, does not meet the continuity requirements of H.J.

Inc,. For purposes of this decision we assume the correctness of Hobson's contention that the \$1.5 million advance payment related to only the shipment of marijuana aboard the Constellation aircraft and did not relate to an earlier aborted shipment of marijuana on a DC-3 aircraft, which had been seized upon its arrival at the Ft. Lauderdale, Florida airport.

With respect to the Constellation smuggling venture, the evidence showed that Hobson, his partner Waldrop, and co-defendant Cobb, were organizers. Hobson and Waldrop agreed to purchase most if not all of the shipment.

The Constellation was flown to Colombia and loaded with marijuana. Trucks furnished by Waldrop and Hobson came to an agreed-upon clandestine landing site in Florida where the Constellation was scheduled to arrive. But because of weather and mechanical problems, the craft was compelled to land in Panama City, Florida in lieu of the clandestine site. Federal agents were ready and waiting upon its arrival and seized it.

After the Constellation effort proved unsuccessful, Hobson, in a telephone conversation that was intercepted and taped, pressured Cobb to produce the marijuana or return the advance payment. 3 In *H.J., Inc.* the Supreme Court adopted a flexible, commonsense approach. It rejected the application of RICO to sporadic activity and widely separated and isolated criminal acts and offenses.

It looked to relationship and continuity. Hobson does not question application of the relatedness concept but only continuity. As the Court pointed out, continuity is both closed- and open-ended, for it may refer to a closed period of repeated conduct or to "past conduct that by its nature projects into the future with a threat of repetition." 492 U.S. at ----, 109 S.Ct. at 2902.

The predicate acts themselves may involve a threat of long-term racketeering activity. Or, the threat of continuity may be established by showing that the predicate acts are part of an organizational entity's regular way of doing business. *Id.* 4 Hobson's characterization of the issue misconceives the facts.

The facts described above, limited to the Constellation endeavor, did not involve merely a single isolated act of paying money but rather a series of acts, including a demand for repayment of a large sum of money or delivery of marijuana to replace the load lost on the Constellation, which "by its nature project[ed] into the future with a threat of repetition."

H.J. Inc., 492 U.S. at ----, 109 S.Ct. at 2902.^{1 5} The orders of the district court denying Hobson's motion to vacate under 28 U.S.C. Sec. 2255 and his motion for new trial are AFFIRMED. * Judges Godbold and Hill were in regular active service when this case was originally submitted and decided ** Honorable Jesse E. Eschbach, Senior U.S. Circuit Judge for the Seventh Circuit, sitting by designation 1 Because we limit our discussion to the Constellation endeavor, we do not need to consider the great range of long-term activities of the organization, embracing massive movements of marijuana into Florida and Georgia by ship and plane over an extended period of time, in some of which activities Hobson was involved