

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)