UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

United States v. Clemente

7 Fed. R. Serv. 1318 (2d Cir. 1981) · No. Nos. 549 to 553; Dockets 80-1261, 80-1263, 80-1271, 80-1273, and 80-1275 · Decided April 14, 1981

SUMMARY

The Second Circuit reviewed convictions arising from a waterfront racketeering enterprise involving Hobbs Act extortion, RICO violations, bribery, tax offenses, and false declarations. The court rejected challenges to the Hobbs Act jury instructions and the sufficiency of the evidence, including challenges to aiding-and-abetting convictions. The opinion addresses the meaning of wrongfulness under the Hobbs Act and the evidentiary proof supporting the defendants' convictions.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Meskill, Circuit Judge; Feinberg, Chief Judge; Friendly, Circuit Judge
JURISDICTION	Federal
DECIDED	April 14, 1981
DOCKET	Nos. 549 to 553; Dockets 80-1261, 80-1263, 80-1271, 80-1273, and 80-1275
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed judgments of conviction entered after a twelve-week jury trial in the United States District Court for the Southern District of New York. They challenged the Hobbs Act jury charge and sufficiency of the evidence, aiding-and-abetting instructions and proof, Taft-Hartley convictions, RICO convictions and conspiracy charge, admission of impeachment evidence, and cross-examination.
STANDARD OF REVIEW	The court reviewed the legal sufficiency of the jury instructions de novo in substance, evaluated the sufficiency of the evidence by viewing the evidence in the light most favorable to the Government and asking whether substantial evidence supported the verdict, reviewed evidentiary rulings and Rule 403 decisions for abuse of discretion, and treated an unobjected-to jury-charge challenge as waived under Federal Rule of Criminal Procedure 30.
PRECEDENTIAL VALUE	precedential

PARTIES	Michael Clemente, Tino Fiumara, Thomas Buzzanca, Vincent Colucci, Carol Gardner, Michael Copolla, Gerald Swanton v. United States of America

TOPICS

criminal procedure | statutory interpretation | conspiracy | evidence | impeachment

PRACTICE AREAS

criminal law | criminal procedure | racketeering | evidence

QUESTIONS PRESENTED

1. Whether the district court correctly instructed the jury that Hobbs Act extortion requires the wrongful use of fear of economic loss to obtain money to which the defendant had no lawful claim.
2. Whether sufficient evidence supported Clemente's Hobbs Act extortion convictions.
3. Whether the aiding-and-abetting instruction and evidence supported Swanton's convictions for aiding and abetting Clemente's extortion.
4. Whether the evidence supported Clemente's convictions for aiding and abetting Buzzanca's receipt of illegal labor payments under the Taft-Hartley Act.
5. Whether an association-in-fact enterprise may be an illegitimate enterprise under RICO and whether a conspiracy to conduct its affairs through racketeering activity is constitutionally intelligible.
6. Whether the defendants preserved their challenge to the RICO conspiracy jury instruction.
7. Whether the district court abused its discretion or committed prejudicial error by permitting cross-examination and impeachment evidence concerning Gardner's financial conduct, prior conviction, and alleged untruthfulness.

HOLDINGS

1. A Hobbs Act extortion conviction is supported where defendants use fear of economic loss to obtain money to which they have no lawful claim; fear of economic loss is not inherently wrongful, but its use becomes wrongful when employed to achieve that unlawful objective.
2. The evidence was sufficient to sustain Clemente's Hobbs Act extortion convictions.
3. An aiding-and-abetting conviction requires proof that the defendant knowingly associated with the criminal venture, participated in it as something he wished to bring about, and sought by his actions to make it succeed; the instruction given to the jury adequately stated that requirement.
4. Sufficient evidence supported Swanton's convictions for aiding and abetting Clemente's extortion, even though Swanton did not personally receive proceeds.
5. The evidence was sufficient to sustain Clemente's convictions for aiding and abetting Buzzanca's receipt of illegal labor payments, notwithstanding Clemente's argument that the proof more directly showed aiding and abetting the making of the payments.

6. Under Second Circuit precedent, the term enterprise in RICO encompasses both legitimate and illegitimate enterprises, including an association-in-fact enterprise having no legitimate purpose.
7. A conspiracy to conduct the affairs of an association-in-fact RICO enterprise through racketeering activity is legally intelligible even when the enterprise and the conspiracy were formed at approximately the same time.
8. The defendants waived their challenge to the RICO conspiracy jury instruction by failing to object in the district court.
9. The district court did not abuse its discretion by permitting cross-examination into Gardner's destruction of records, loan transactions, and purported charitable payments, or by admitting evidence of his prior conviction; admission of the loan applications, even if erroneous under Rule 608(b), was harmless in light of the substantial evidence of guilt.

KEY QUOTATIONS

> *"Extortion, as defined in the Hobbs Act, consists of the use of wrongful means to achieve a wrongful objective."* (640 F.2d at 1074)

> *"It is obvious that the use of fear of financial injury is not inherently wrongful."* (640 F.2d at 1075)

> *"The obtaining of money by one who is functioning as a salesman or a broker for the successful solicitation or referral of business, or for use of his influence, good will, or advice, does not in and of itself constitute extortion unless you find that the payment of such monies was induced by wrongful threat or fear of economic loss."* (640 F.2d at 1075)

> *"To aid and abet the commission of a crime, a defendant must "in some way associate himself with the venture, participate in it as something that he wishes to bring about, (and) seek by his action to make it succeed.""* (640 F.2d at 1077)

> *"Although we decline this opportunity to review our position taken in Altese, we note in passing that the purpose of the "enterprise" here was the establishment of a pattern of racketeering activity in a legitimate business, the waterfront industry."* (640 F.2d at 1081)

FACTUAL BACKGROUND

The Government's evidence depicted Clemente and Fiumara as leaders of an organized waterfront enterprise controlling labor unions and shipping-related businesses in New York and New Jersey. The defendants allegedly used threats of economic loss, influence over union locals, and control of waterfront work to obtain recurring cash payments from ship-servicing companies and other businesses. The Government introduced court-authorized interceptions, consensual recordings, physical surveillance, and testimony from cooperating witness William Montella concerning extortionate payoffs and the defendants' roles in the enterprise.

PROCEDURAL HISTORY

The defendants were tried before Judge Sand on a 213-count indictment charging Hobbs Act extortion, Taft-Hartley labor-payment offenses, RICO violations and conspiracy, tax offenses, and false declarations before a grand jury. The jury returned convictions on numerous counts, and the district court imposed substantial prison terms and fines. The Second Circuit considered the defendants' appellate challenges and affirmed the judgments of conviction.

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)
- United States v. Brecht, 540 F.2d 45 (2d Cir. 1976)
- 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)
- United States v. Provenzano, 334 F.2d 678 (3d Cir. 1964)
- United States v. Altese, 542 F.2d 104 (2d Cir. 1976)
- 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)
- United States v. Anderson, 626 F.2d 1358 (8th Cir. 1980)
- United States v. Diecidue, 603 F.2d 535 (5th Cir. 1979)
- 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. 1979)
- United States v. Benedetto, 571 F.2d 1246 (2d Cir. 1978)
- United States v. King, 560 F.2d 122 (2d Cir. 1977)
- United States v. Graham, 102 F.2d 436 (2d Cir. 1939)
- United States v. Hockridge, 573 F.2d 752 (2d Cir. 1978)
- United States v. Provenzano, 620 F.2d 985 (3d Cir. 1980)