

SUPREME COURT OF THE UNITED STATES

Kotteakos v. United States

328 U.S. 750 (1946) · No. Nos. 457 and 458 · Decided June 10, 1946

SUMMARY

The Supreme Court held that the petitioners were substantially prejudiced when they were charged with a single conspiracy but the evidence established multiple separate conspiracies. The Court concluded that the variance, combined with erroneous jury instructions allowing evidence and acts of one conspiracy to be attributed to the others, was not harmless error. The convictions were therefore subject to reversal.

CASE DETAILS

COURT	Supreme Court of the United States
WRITING FOR THE COURT	Justice Rutledge; Justice Black; Justice Douglas; Justice Jackson; Justice Reed; Justice Frankfurter; Justice Murphy; Justice Burton; Justice Vinson
JURISDICTION	Federal
DECIDED	June 10, 1946
DOCKET	Nos. 457 and 458
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petitioners sought review by certiorari of judgments affirming their federal conspiracy convictions.
STANDARD OF REVIEW	The Supreme Court examined the entire record to determine whether the variance, misjoinder, and erroneous jury instructions affected petitioners' substantial rights and had a substantial and injurious effect or influence on the verdict.
PRECEDENTIAL VALUE	United States Supreme Court precedent
PARTIES	Kotteakos et al., Regenbogen v. United States

TOPICS

- harmless error
- criminal procedure
- appellate procedure
- preservation of error
- evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether petitioners were substantially prejudiced by being tried and convicted for a single general conspiracy when the evidence proved eight or more separate conspiracies connected only by a common intermediary.
2. Whether the trial court's instructions erroneously permitted the jury to treat separate conspiracies as one conspiracy and to attribute the acts and statements of participants in one conspiracy to defendants involved in other conspiracies.
3. Whether the variance and joinder errors were harmless under the federal harmless-error statute.

HOLDINGS

1. A variance is reversible in a criminal conspiracy trial when the Government proves numerous separate conspiracies and the resulting trial exposes defendants to substantial risks of confusion, transference of guilt, and inability to defend individually; in that circumstance, the variance affects substantial rights and is not harmless.
2. Instructions that require the jury to find a single conspiracy when the evidence proves multiple separate conspiracies, and that permit acts or statements of any alleged conspirator to be attributed to all defendants, constitute prejudicial error when they permeate the trial and undermine individualized consideration of each defendant.
3. The possibility that each defendant could have been convicted in a properly conducted separate trial is not the harmless-error test; the relevant inquiry is whether the error itself had a substantial influence on the jury's verdict.

KEY QUOTATIONS

“If, when all is said and done, the conviction is sure that the error did not influence the jury, or had but very slight effect, the verdict and the judgment should stand, except perhaps where the departure is from a constitutional norm or a specific command of Congress.” (328 U.S. at 765)

“But if one cannot say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error, it is impossible to conclude that substantial rights were not affected.” (328 U.S. at 765)

“Guilt with us remains individual and personal, even as respects conspiracies. It is not a matter of mass application.” (328 U.S. at 772)

“Accordingly the judgments are reversed and the causes are remanded for further proceedings in conformity with this opinion.” (328 U.S. at 777)

FACTUAL BACKGROUND

The indictment charged thirty-two defendants with one general conspiracy to obtain National Housing Act loans through false and fraudulent applications. The Government's evidence instead established at least eight separate conspiracies involving different groups of participants, with Simon Brown serving as the common intermediary. The trial court instructed the jury that it had to find one overarching conspiracy and permitted acts and statements of any member of that supposed conspiracy to be attributed to all defendants. Seven defendants, including the petitioners, were convicted.

PROCEDURAL HISTORY

Petitioners were convicted in the federal trial court under a single-conspiracy indictment alleging violations of the National Housing Act. The evidence showed eight or more separate conspiracies connected only through a common intermediary, Simon Brown. The Court of Appeals affirmed, concluding that the variance between the charged and proved conspiracies was not prejudicial. The Supreme Court granted certiorari and reversed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The causes were remanded for further proceedings in conformity with the Supreme Court's opinion.

CASES CITED

- United States v. Falcone, 311 U.S. 205 (1940)
- United States v. Peoni, 100 F.2d 401 (2d Cir. 1938)
- Tinsley v. United States, 43 F.2d 890 (8th Cir. 1930)
- Berger v. United States, 295 U.S. 78 (1935)
- Bruno v. United States, 308 U.S. 287 (1939)
- Weiler v. United States, 323 U.S. 606 (1945)
- United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940)
- Bollenbach v. United States, 326 U.S. 607 (1946)
- Gebardi v. United States, 287 U.S. 112 (1932)
- United States v. Liss, 137 F.2d 995 (2d Cir. 1943)
- United States v. Cohen, 145 F.2d 82 (2d Cir. 1944)
- United States v. Rosenberg, 150 F.2d 788 (2d Cir. 1945)
- Telman v. United States, 67 F.2d 716 (2d Cir. 1933)
- Tot v. United States, 319 U.S. 463 (1943)
- Malinski v. New York, 324 U.S. 401 (1945)
- Lyons v. Oklahoma, 322 U.S. 596 (1944)
- Bram v. United States, 168 U.S. 532 (1897)
- Bartell v. United States, 227 U.S. 427 (1913)

