

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
WEST VIRGINIA

United States v. Teemer

214 F. Supp. 952 (N.D. W. Va. 1963) · No. Crim. Nos. 7422, 7423 · Decided March 19, 1963

SUMMARY

The United States District Court for the Northern District of West Virginia considers pretrial motions in related prosecutions under 18 U.S.C. § 1952 involving interstate travel and the operation of an unlawful gambling enterprise. The court rejects challenges asserting that § 1952 is unconstitutional and that the indictments are insufficiently particular, and denies without prejudice motions concerning count consolidation and election between conspiracy and substantive charges. The court holds that the indictments adequately allege the charged conduct and reserves issues concerning search-and-seizure motions.

CASE DETAILS

COURT	United States District Court for the Northern District of West Virginia
WRITING FOR THE COURT	Charles F. Paul
JURISDICTION	West Virginia
DECIDED	March 19, 1963
DOCKET	Crim. Nos. 7422, 7423
DISPOSITION	other
PROCEDURAL POSTURE	Defendants in two related federal criminal prosecutions moved before trial to dismiss the indictments, consolidate or dismiss substantive counts, compel the government to elect between conspiracy and substantive counts, and sever the charges.
STANDARD OF REVIEW	The court evaluated whether the indictments sufficiently informed defendants of the charges and protected against subsequent double-jeopardy claims under Rule 7(c), whether § 1952 was unconstitutionally vague, and whether joinder and severance required relief under Rules 13 and 14.
PRECEDENTIAL VALUE	Published federal district court opinion; persuasive authority outside the Northern District of West Virginia.

TOPICS

criminal procedure

gambling

statutory interpretation

fifth amendment

sixth amendment

PRACTICE AREAS

criminal procedure

constitutional law

federal criminal law

gambling law

QUESTIONS PRESENTED

1. Whether 18 U.S.C. § 1952 was unconstitutionally vague under the Fifth and Sixth Amendments.
2. Whether the indictments sufficiently alleged the post-travel acts required by § 1952 or improperly stated only statutory conclusions.
3. Whether the indictments were insufficient because they did not plead the alleged state-law gambling offense with all technicalities required under West Virginia law.
4. Whether the substantive § 1952 counts improperly fragmented a single course of conduct into multiple offenses.
5. Whether the government should be compelled to elect between the conspiracy count and the substantive counts or whether those charges should be severed under Rule 14.

HOLDINGS

1. Section 1952 is not unconstitutionally vague because it identifies the prohibited interstate travel or use of interstate facilities, the required intent, and the subsequent performance or attempted performance of acts promoting or facilitating an unlawful activity.
2. The indictments adequately charged the § 1952 offenses even though they did not specify every particular act of promotion, management, or facilitation.
3. An indictment charging a federal § 1952 offense need not comply with every technicality applicable to a state-law indictment charging the underlying gambling offense.
4. The court declined to consolidate or dismiss the substantive counts at the pretrial stage; each act of interstate travel with the requisite intent and subsequent participation could constitute a separate offense.
5. The court denied the motion to compel an election or sever the conspiracy and substantive counts, finding that the established practice of charging both could be managed through jury instructions and careful presentation of the evidence.

KEY QUOTATIONS

“The fact that a criminal statute must be interpreted with reference to its applicability to a given state of facts does not, in itself, render the statute unconstitutionally vague.” (at 956)

“This seems to be a sufficient compliance with the fundamental purposes of an indictment to inform the defendants of the criminal acts with which they are charged” (at 958)

FACTUAL BACKGROUND

The defendants were allegedly involved in operating or working at the Jockey Club, a gambling club or casino in northern West Virginia near the Pennsylvania and Ohio borders. The establishment maintained roulette, craps, blackjack, and slot-machine gambling activities and allegedly operated as a business enterprise involving gambling in violation of West Virginia law. Several defendants traveled from Pennsylvania or Ohio to the Jockey Club for employment, and at least one traveled between the club and an Ohio location where a business bank account was maintained.

PROCEDURAL HISTORY

The government indicted defendants in Criminal No. 7423 on one conspiracy count and seven substantive counts under 18 U.S.C. § 1952, and indicted five defendants separately in Criminal No. 7422 on one § 1952 count. The defendants filed pretrial motions challenging the constitutionality and sufficiency of the indictments, the multiplicity of the substantive counts, and the joinder of conspiracy and substantive charges. The court denied the motions to dismiss and the alternative motions, without prejudice to renewal of the multiplicity argument, and held a suppression motion in abeyance pending a proposed substituted motion attacking the search warrants.

DISPOSITION

other

CASES CITED

- State v. Henaghan, 73 W. Va. 706, 81 S.E. 539
- United States v. Barrow, 212 F. Supp. 837 (E.D. Pa. 1962)
- United States v. Smith, 209 F. Supp. 907 (E.D. Ill. 1962)
- United States v. National Dairy Products Corp., 83 S. Ct. 594 (1963)
- Russell v. United States, 369 U.S. 749, 82 S. Ct. 1038, 8 L. Ed. 2d 240 (1962)
- Markham v. United States, 160 U.S. 319, 16 S. Ct. 288, 40 L. Ed. 441 (1895)
- United States v. Downing, 51 F.2d 1030 (2d Cir. 1931)
- United States v. Negro, 164 F.2d 168 (2d Cir. 1947)
- United States v. Grunewald, 162 F. Supp. 626 (S.D.N.Y. 1958)
- McCoy v. Pescor, 145 F.2d 260 (8th Cir. 1944)
- Mitchell v. United States, 142 F.2d 480 (10th Cir. 1944)
- United States v. Universal C.I.T. Credit Corp., 344 U.S. 218, 73 S. Ct. 227, 97 L. Ed. 260 (1952)
- Bell v. United States, 349 U.S. 81, 75 S. Ct. 620, 99 L. Ed. 905 (1955)
- United States v. Tolub, 309 F.2d 286 (2d Cir. 1962)
- United States v. Martin, 292 F.2d 702 (4th Cir. 1961)
- Fisher v. United States, 231 F.2d 99 (9th Cir. 1956)
- Krulewitch v. United States, 336 U.S. 440, 69 S. Ct. 716, 93 L. Ed. 790 (1949)
- United States v. Solomon, 26 F.R.D. 397 (S.D. Ill. N.D. 1960)

