John H. EVANS, Jr. v. UNITED STATES

504 U.S. 255 (May 26, 1992)

Synopsis

Defendant was convicted, in the United States District Court for the Northern District of Georgia, Horace T. Ward, J., of attempted extortion under color of official right in violation of the Hobbs Act and of subscribing to materially false federal income tax return. He appealed. The Court of Appeals, Eleventh Circuit affirmed the conviction. Following grant of certiorari, the Supreme Court, Justice Stevens, held that affirmative act of inducement by public official was not an element of offense of extortion "under color of official right" prohibited by Hobbs Act. UNITED STATES, petitioner,

After its motion to dismiss was denied, 941 F.Supp. 1262, agricultural trade association was convicted in the United States District Court for the District of Columbia, Urbina, J., of violating gratuity statute, wire fraud, and making illegal campaign contributions. Following denial if its postverdict motion for acquittal, 964 F.Supp. 486, trade association appealed. The Court of Appeals for the District of Columbia Circuit, 138 F.3d 961, affirmed in part, reversed and vacated in part, and remanded. Certiorari was granted limited to issues arising under gratuity statute. The Supreme Court, Justice Scalia, held that: (1) to establish violation of federal gratuity statute, government must prove link between thing of value conferred upon public official and a specific "official act" for or because of which it was given, and (2) jury instruction, explaining statutory language by essentially substituting the term "official position" for "official act," was not harmless error.

Justice STEVENS delivered the opinion of the Court.

We granted certiorari to resolve a conflict in the Circuits over the question whether an affirmative act of inducement by a public official, such as a demand, is an element of the offense of extortion "under color of official right" prohibited by the Hobbs Act. We agree with the Court of Appeals for the Eleventh Circuit that it is not, and therefore affirm the judgment of the court below.

Petitioner was an elected member of the Board of Commissioners of DeKalb County, Georgia. During the period between March 1985 and October 1986, as part of an effort by the Federal Bureau of Investigation (FBI) to investigate allegations of public corruption in the Atlanta area, particularly in the area of rezonings of property, an FBI agent posing as a real estate developer talked on the telephone and met with petitioner on a number of occasions. Virtually all, if not all, of those conversations were initiated by the agent and most were recorded on tape or video. In those conversations, the agent sought petitioner's assistance in an effort to rezone a 25–acre tract of land for high-density residential use. On July 25, 1986, the agent handed petitioner cash totaling $7,000 and a check, payable to petitioner's campaign, for $1,000. Petitioner reported the check, but not the cash, on his state campaign-financing disclosure form; he also did not report the $7,000 on his 1986 federal income tax return. Viewing the evidence in the light most favorable to the Government, as we must in light of the verdict, we assume that the jury found that petitioner accepted the cash knowing that it was intended to ensure that he would vote in favor of the rezoning application and that he would try to persuade his fellow commissioners to do likewise. Thus, although petitioner did not initiate the transaction, his acceptance of the bribe constituted an implicit promise to use his official position to serve the interests of the bribegiver.

In a two-count indictment, petitioner was charged with extortion in violation of 18 U.S.C. § 1951 and with failure to report income in violation of 26 U.S.C. § 7206(1). He was convicted by a jury on both counts. With respect to the extortion count, the trial judge gave the following instruction:

"The defendant contends that the $8,000 he received from agent Cormany was a campaign contribution. The solicitation of campaign contributions from any person is a necessary and permissible form of political activity on the part of persons who seek political office and persons who have been elected to political office. Thus, the acceptance by an elected official of a campaign contribution does not, in itself, constitute a violation of the Hobbs Act even though the donor has business pending before the official."

"However, if a public official demands or accepts money in exchange for [a] specific requested exercise of his or her official power, such a demand or acceptance does constitute a violation of the Hobbs Act regardless of whether the payment is made in the form of a campaign contribution."

In affirming petitioner's conviction, the Court of Appeals noted that the instruction did not require the jury to find that petitioner had demanded or requested the money, or that he had conditioned the performance of any official act upon its receipt. The Court of Appeals held, however, that "passive acceptance of a benefit by a public official is sufficient to form the basis of a Hobbs Act violation if the official knows that he is being offered the payment in exchange for a specific requested exercise of his official power. The official need not take any specific action to induce the offering of the benefit."

This statement of the law by the Court of Appeals for the Eleventh Circuit is consistent with holdings in eight other Circuits. Two Circuits, however, have held that an affirmative act of inducement by the public official is required to support a conviction of extortion under color of official right. *United States v. O'Grady*, 742 F.2d 682, 687 (CA2 1984) (en banc) ("Although receipt of benefits by a public official is a necessary element of the crime, there must also be proof that the public official did something, under color of his public office, to cause the giving of benefits"); *United States v. Aguon*, 851 F.2d 1158, 1166 (CA9 1988) (en banc) ("We find ourselves in accord with the Second Circuit's conclusion that inducement is an element required for conviction under the Hobbs Act"). Because the majority view is consistent with the common-law definition of extortion, which we believe Congress intended to adopt, we endorse that position.

II

It is a familiar "maxim that a statutory term is generally presumed to have its common-law meaning." As we have explained: "[W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such case, absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them."

At common law, extortion was an offense committed by a public official who took "by colour of his office" money that was not due to him for the performance of his official duties. A demand, or request, by the public official was not an element of the offense. Extortion by the public official was the rough equivalent of what we would now describe as "taking a bribe." It is clear that petitioner committed that

offense. The question is whether the federal statute, insofar as it applies to official extortion, has narrowed the common-law definition.

Congress has unquestionably expanded the common-law definition of extortion to include acts by private individuals pursuant to which property is obtained by means of force, fear, or threats. It did so by implication in the Travel Act, 18 U.S.C. § 1952, and expressly in the Hobbs Act. The portion of the Hobbs Act that is relevant to our decision today provides:

> "(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.
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> "(b) As used in this section—
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> . . . . .
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> "(2) The term 'extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."

The present form of the statute is a codification of a 1946 enactment, the Hobbs Act, which amended the federal Anti–Racketeering Act. In crafting the 1934 Act, Congress was careful not to interfere with legitimate activities between employers and employees. The 1946 amendment was intended to encompass the conduct held to be beyond the reach of the 1934 Act by our decision in *United States v. Teamsters*. The amendment did not make any significant change in the section referring to obtaining property "under color of official right" that had been prohibited by the 1934 Act. Rather, Congress intended to broaden the scope of the Anti–Racketeering Act and was concerned primarily with distinguishing between "legitimate" labor activity and labor "racketeering," so as to prohibit the latter while permitting the former.

Many of those who supported the amendment argued that its purpose was to end the robbery and extortion that some union members had engaged in, to the detriment of all labor and the American citizenry. They urged that the amendment was not, as their opponents charged, an anti-labor measure, but rather, it was a necessary measure in the wake of this Court's decision in *United States v. Teamsters*. In their view, the Supreme Court had mistakenly exempted labor from laws prohibiting robbery and extortion, whereas Congress had intended to extend such laws to all American citizens.

Although the present statutory text is much broader than the common-law definition of extortion because it encompasses conduct by a private individual as well as conduct by a public official, the portion of the statute that refers to official misconduct continues to mirror the common-law definition. There is nothing in either the statutory text or the legislative history that could fairly be described as a "contrary direction" from Congress to narrow the scope of the offense.

The legislative history is sparse and unilluminating with respect to the offense of extortion. There is a reference to the fact that the terms "robbery and extortion" had been construed many times by the

courts and to the fact that the definitions of those terms were “based on the New York law.” The language of the New York statute quoted above makes clear that extortion could be committed by one who merely received an unauthorizedpayment. This was the statute that was in force in New York when the Hobbs Act was enacted.

The two courts that have disagreed with the decision to apply the common-law definition have interpreted the word “induced” as requiring a wrongful use of official power that “begins with the public official, not with the gratuitous actions of another.” *United States v. O’Grady* and *United States v. Aguon*. If we had no common-law history to guide our interpretation of the statutory text, that reading would be plausible. For two reasons, however, we are convinced that it is incorrect.

First, we think the word “induced” is a part of the definition of the offense by the private individual, but not the offense by the public official. In the case of the private individual, the victim’s consent must be “induced by wrongful use of actual or threatened force, violence or fear.” In the case of the public official, however, there is no such requirement. The statute merely requires of the public official that he obtain “property from another, with his consent, ... under color of official right.” The use of the word “or” before “under color of official right” supports this reading.

Second, even if the statute were parsed so that the word “induced” applied to the public officeholder, we do not believe the word “induced” necessarily indicates that the transaction must be initiated by the recipient of the bribe. Many of the cases applying the majority rule have concluded that the wrongful acceptance of a bribe establishes all the inducement that the statute requires.16 They conclude that the coercive element is provided by the public office itself. And even the two courts that have adopted an inducement requirement for extortion under color of official right do not require proof that the inducement took the form of a threat or demand.

Petitioner argues that the jury charge with respect to extortion allowed the jury to convict him on the basis of the “passive acceptance of a contribution.” He contends that the instruction did not require the jury to find “an element of duress such as a demand,” and it did not properly describe the quid pro quo requirement for conviction if the jury found that the payment was a campaign contribution.

We reject petitioner’s criticism of the instruction, and conclude that it satisfies the quid pro quo requirement of *McCormick v. United States*, because the offense is completed at the time when the public official receives a payment in return for his agreement to perform specific official acts; fulfillment of the quid pro quo is not an element of the offense. We also reject petitioner’s contention that an affirmative step is an element of the offense of extortion “under color of official right” and need be included in the instruction. As we explained above, our construction of the statute is informed by the common-law tradition from which the term of art was drawn and understood. We hold today that the Government need only show that a public official has obtained a payment to which he was not entitled, knowing that the payment was made in return for official acts.

Our conclusion is buttressed by the fact that so many other courts that have considered the issue over the last 20 years have interpreted the statute in the same way. Moreover, given the number of appellate court decisions, together with the fact that many of them have involved prosecutions of important officials well known in the political community, it is obvious that Congress is aware of the

prevailing view that common-law extortion is proscribed by the Hobbs Act. The silence of the body that is empowered to give us a "contrary direction" if it does not want the common-law rule to survive is consistent with an application of the normal presumption identified in *Taylor* and *Morissette*.

III

An argument not raised by petitioner is now advanced by the dissent. It contends that common-law extortion was limited to wrongful takings under a false pretense of official right. It is perfectly clear, however, that although extortion accomplished by fraud was a well-recognized type of extortion, there were other types as well. As the court explained in *Commonwealth v. Wilson*, 30 Pa.Super. 26 (1906), an extortion case involving a payment by a would-be brothel owner to a police captain to ensure the opening of her house: "The form of extortion most commonly dealt with in the decisions is the corrupt taking by a person in office of a fee for services which should be rendered gratuitously; or when compensation is permissible, of a larger fee than the law justifies, or a fee not yet due; but this is not a complete definition of the offense, by which I mean that it does not include every form of common-law extortion."

The dissent's theory notwithstanding, not one of the cases it cites holds that the public official is innocent unless he has deceived the payor by representing that the payment was proper. Indeed, none makes any reference to the state of mind of the payor, and none states that a "false pretense" is an element of the offense. Instead, those cases merely support the proposition that the services for which the fee is paid must be official and that the official must not be entitled to the fee that he collected—both elements of the offense that are clearly satisfied in this case. The complete absence of support for the dissent's thesis presumably explains why it was not advanced by petitioner in the District Court or the Court of Appeals, is not recognized by any Court of Appeals, and is not advanced in any scholarly commentary.

The judgment is affirmed.

It is so ordered.