The Burger Court Opinion Writing Database

United States v. Feola

420 U.S. 671 (1975)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 21, 1975

Re: No. 73-1123 - United States v. Feola

Dear Harry:

I join in your opinion dated February 14, 1975.

Regards,

WEB

Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 28, 1975

Dear Potter:

Please join me in 73-1123,
UNITED STATES v. FEOLA.

WOD/Sandra

WILLIAM O. DOUGLAS

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 18, 1975

RE: No. 73-1123 United States v. Feola

Dear Harry:

I agree.

Sincerely,

Bill

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

February 14, 1975

MEMORANDUM TO THE CONFERENCE

Re: No. 73-1123 - United States v. Feola

I shall in due course circulate a dissenting opinion in this case.

P. S.

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73–1123

United States, Petitioner, *v.* Ralph Feola. } On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[March —, 1975]

MR. JUSTICE STEWART, dissenting.

Does an assault on a federal officer violate 18 U. S. C. § 111 [1] even when the assailant is unaware, and has no reason to know, that the victim is other than a private citizen or, indeed, a confederate in crime? This important question, never decided by the Court, is squarely presented in a petition for certiorari that has been pending here for many months: No. 73–6868, *Fernandez* v. *United States*.[2] But this question was not contained in the petition for certiorari in the present case, and has not been addressed in either the briefs or oral arguments. The parties have merely assumed the answer to the question, and directed their attention to the separate question whether *scienter* is an element of *conspiring* to violate § 111. Nevertheless the Court sets out *sua sponte* to

[1] "Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of his official duties, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

"Whoever, in the commission of any such acts uses a deadly or dangerous weapon, shall be fined not more than $10,000 or imprisoned not more than ten years, or both."

[2] The petition seeks review of a judgment of the United States Court of Appeals for the Ninth Circuit, affirming a substantive conviction under 18 U. S. C. § 111: *United States* v. *Fernandez*, 497 F. 2d 730.

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1123

United States, Petitioner, *v.* Ralph Feola. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[March —, 1975]

MR. JUSTICE STEWART, dissenting.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 18, 1975

Re: No. 73-1123 - United States v. Feola

Dear Harry:

Please join me.

Sincerely yours,

Mr. Justice Blackmun

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 27, 1975

Re: No. 73-1123 -- United States v. Ralph Feola

Dear Harry:

Please join me.

Sincerely,

T. M.

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 14, 1975

MEMORANDUM TO THE CONFERENCE

Re: No. 73-1123 - United States v. Feola

My notes indicate that it was the consensus that in the opinion for this case we were to discuss the necessity of scienter for the substantive offense. I have attempted to do this even though the parties have conceded this aspect, and the case, as presented to us, is confined to the conspiracy.

Sincerely,

H.A.B.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

From: Blackmun, J.

Circulated: 2/14/75

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73–1123

United States, Petitioner, *v.* Ralph Feola. } On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[February —, 1975]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the issue whether knowledge, actual or properly inferred, that the intended victim is a federal officer is a requisite for the crime of conspiracy, under 18 U. S. C. § 371, to commit an offense violative of 18 U. S. C. § 111,[1] that is, an assault upon a federal officer while engaged in the performance of his official duties.

Respondent Feola and three others (Alsondo, Rosa, and Farr) were indicted for violations of § 371 and § 111. A jury found all four defendants guilty of both charges.[2]

[1] "§ 111. Assaulting, resisting, or impeding certain officers or employees.

"Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of his official duties, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

"Whoever, in the commission of any such acts uses a deadly or dangerous weapon, shall be fined not more than $10,000 or imprisoned not more than ten years, or both."

Among the persons "designated in section 1114" of 18 U. S. C. is "any officer or employee . . . of the Bureau of Narcotics and Dangerous Drugs."

[2] Codefendant Alsondo was also convicted of carrying a firearm

pp. 1, 13

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

From: Blackmun, J.

Circulated: _____

Recirculated: 2/27/75

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1123

United States, Petitioner, *v.* Ralph Feola. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[February —, 1975]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the issue whether knowledge that the intended victim is a federal officer is a requisite for the crime of conspiracy, under 18 U. S. C. § 371, to commit an offense violative of 18 U. S. C. § 111,[1] that is, an assault upon a federal officer while engaged in the performance of his official duties.

Respondent Feola and three others (Alsondo, Rosa, and Farr) were indicted for violations of § 371 and § 111. A jury found all four defendants guilty of both charges.[2]

[1] "§ 111. Assaulting, resisting, or impeding certain officers or employees.

"Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of his official duties, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

"Whoever, in the commission of any such acts uses a deadly or dangerous weapon, shall be fined not more than $10,000 or imprisoned not more than ten years, or both."

Among the persons "designated in section 1114" of 18 U. S. C. is "any officer or employee . . . of the Bureau of Narcotics and Dangerous Drugs."

[2] Codefendant Alsondo was also convicted of carrying a firearm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 19, 1975

MEMORANDUM TO THE CONFERENCE

Herewith are my comments as to the Holds for No. 73-1123, United States v. Feola.

Sincerely,

H. A. B.

Wm. Doyle
Oct 74

MEMORANDUM TO THE CONFERENCE

Re: Holds for No. 73-1123 - United States v. Feola

1. No. 73-953, Farr v. United States. This is the petition of one of Feola's associates. The appeal from his conviction was processed separately by the CA 2. That court, as in Feola's case, affirmed the judgment of conviction on the substantive charge but reversed the conspiracy conviction. Farr claims here, citing Pinkerton v. United States, 328 U.S. 640 (1946), that because the conspiracy conviction was reversed, the substantive conviction cannot stand. The United States did not cross-petition because of the imposition of concurrent sentences. With our reversal of the CA 2's vacation of the conspiracy conviction, the Pinkerton rationale loses its force. I shall vote to deny.

2. No. 73-6868, Fernandez v. United States. This case, up from the Ninth Circuit, is much like Feola on its facts. It, too, was a narcotics rip-off. Fernandez and others were charged, among other things, with assault and with conspiracy to assault, in violation of 18 U.S.C. §§ 111 and 371, respectively. The CA 9 held that specific knowledge that the victim is a federal agent is not an essential element of the offense of forcible assault upon a federal officer or of conspiracy to assault a federal officer in performance of his official duties. Judge Hufstedler concurred specially "under the compulsion of the law of the

Wm Doug
OCT 74

circuit," but wrote at some length setting forth her reasons for believing that the CA 9 cases were wrong in holding that knowledge of the victim's official status is not an essential element of the substantive offense under § 111. Potter cited Fernandez in his dissent in Feola and agreed with much of Judge Hufstedler's reasoning.

The petitioners also make contentions regarding the jury instructions, prosecutorial misconduct, search of prospective jurors, and a request for a surveillance file. In my view, none of these contentions is certworthy. Moreover, the SG indicates that the instruction and surveillance clauses were not raised below. I shall vote to deny.

3. No. 73-5489. Polesti v. United States. Petitioner and others were convicted on charges of possessing 617 cases of scotch whiskey stolen from interstate commerce, in violation of 18 U.S.C. § 659, and conspiracy to commit the substantive offense. Petitioner was sentenced to 10 years on the substantive count and a concurrent term of 5 years on the conspiracy count. The CA 7 affirmed.

The trial court instructed the jury as follows:

> "It is not necessary, however, to prove that the defendants knew that the property was stolen from an interstate shipment. It is sufficient if they knew that the property was stolen . . . ."

Petitioner has never objected to the above instruction as it relates to the substantive offense, but, relying expressly on the Crimmins

doctrine, petitioner argues that the trial court erred in allowing the jury to apply the instruction to the conspiracy count. The rejection of the Crimmins doctrine in Feola disposes of this claim by petitioner.

Polesti also argues that his Sixth Amendment right to compulsory process was abridged when, at a pre-trial hearing, the trial court refused to enforce his subpoena duces tecum directed at the investigative report of a Chicago police officer. Since the police officer was a prospective government witness and the report was in the possession of the government, enforcement of the subpoena was denied on the basis of the Jencks Act. Petitioner claims that the report was not in the government's possession because the prosecutor had only a photocopy rather than the original. I do not regard petitioner's attempt to escape the express provisions of 18 U.S.C. § 3500 as certworthy. I shall vote to deny.

4. No. 73-6009, Hickman v. United States. Petitioner, a co-defendant of Polesti, raises a Crimmins claim identical to that raised by Polesti in No. 73-5489. Feola is dispositive of this claim.

Petitioner also raises two search and seizure claims. First, petitioner argues that the police conducted an illegal search when they peered through a one or two inch opening in the doors of the tractor trailer that contained the whiskey. The trailer was on a

parking lot accessible to the public, and the courts below sustained the "search" on plain view grounds. The second point raised by Hickman is that the arresting officers exceeded the bounds of a legitimate search incident to arrest in seizing two cartons of scotch from the trailer and later checking the serial numbers on the cartons. Some of the cartons already had been unloaded from the trailer and placed in rented trucks, and the arresting officers had probable cause to believe that the cartons in plain view were stolen property that could be moved quickly out of the locality. I do not find either of the search and seizure contentions certworthy. I shall vote to deny.

5. No. 73-6659, Butler and Jackson v. United States. These petitioners were caught stealing tires from a railroad boxcar. They were convicted of theft from an interstate shipment, in violation of 18 U.S.C. § 659; of breaking seals on railroad cars containing interstate shipments, in violation of 18 U.S.C. § 2117; and of conspiracy to commit these offenses. Each petitioner received concurrent sentences of three years on each count. The CA 7 affirmed.

The boxcar in question was at an interchange track at the Illinois Central's East St. Louis freight yard. The petitioners proceeded down a string of cars breaking seals and opening doors as they went along. They had removed a number of tires from one boxcar before they were apprehended by railroad detectives observing

their activities. The CA 7 expressly rejected the Crimmins doctrine and, instead, followed the lead of the Ninth Circuit. Petitioners' Crimmins claim is foreclosed by Feola.

Petitioners' second claim is that the trial court failed adequately to instruct the jury that one of the essential elements of conspiracy is an agreement or combination. The SG indicates that petitioners not only failed to object to the alleged inadequacies of the instructions, but they affirmatively protested to the trial court that "we're getting a little heavy on conspiracy instructions at this time." Petition Appendix at 3.

In view of the facts, that is, the catching of the petitioners red-handed in an interstate railroad interchange track area, and in view of the concurrent sentences imposed, I am not at all sure why we held this case for Feola. In any event, I would deny now.

H. A. B.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 20, 1975

No. 73-1123 U.S. v. Feola

Dear Harry:

Please join me.

Sincerely,

Mr. Justice Blackmun

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 19, 1975

Re: No. 73-1123 - United States v. Feola

Dear Harry:

Please join me.

Sincerely,

Mr. Justice Blackmun

Copies to the Conference