

The Burger Court Opinion Writing Database

Liparota v. United States

471 U.S. 419 (1985)

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



6

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

CHAMBERS OF
THE CHIEF JUSTICE

May 6, 1985

Re: No. 84-5108 - Liparota v. United States

Dear Byron:

I join.

Regards,

Justice White

Copies to the Conference

84-5108-2

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

M
CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 22, 1985

No. 84-5108

Liparota v. United States

Dear Chief,

I will undertake the opinion for
the Court in the above.

Sincerely,

Bill

The Chief Justice

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

Circulated: APR 18 1985

Recirculated: _____

WTB
Please for me
M

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5108

FRANK LIPAROTA, PETITIONER v. UNITED STATES

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT**

[April —, 1985]

JUSTICE BRENNAN delivered the opinion of the Court.

The federal statute governing food stamp fraud provides that "whoever knowingly uses, transfers, acquires, alters, or possesses coupons or authorization cards in any manner not authorized by [statute or regulations]" is subject to a fine and imprisonment. 7 U. S. C. §2024(b).¹ The question presented is whether in a prosecution under this provision the Government must prove that the defendant knew that he was acting in a manner not authorized by statute or regulations.

¹The statute provides in relevant part:

"[W]hoever knowingly uses, transfers, acquires, alters, or possesses coupons or authorization cards in any manner not authorized by this chapter or the regulations issued pursuant to this chapter shall, if such coupons or authorization cards are of a value of \$100 or more, be guilty of a felony and shall, upon the first conviction thereof, be fined not more than \$10,000 or imprisoned for not more than five years, or both, and, upon the second and any subsequent conviction thereof, shall be imprisoned for not less than six months nor more than five years and may also be fined not more than \$10,000 or, if such coupons or authorization cards are of a value of less than \$100, shall be guilty of a misdemeanor, and, upon the first conviction thereof, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than \$1,000. In addition to such penalties, any person convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 2015(b)(1) of this title."

4/18
Law

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 13, 14

From: Justice Brennan

Circulated: _____

Recirculated: APR 29 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5108

FRANK LIPAROTA, PETITIONER v. UNITED STATES

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT**

[April —, 1985]

JUSTICE BRENNAN delivered the opinion of the Court.

The federal statute governing food stamp fraud provides that "whoever knowingly uses, transfers, acquires, alters, or possesses coupons or authorization cards in any manner not authorized by [the statute] or the regulations" is subject to a fine and imprisonment. 7 U. S. C. §2024(b).¹ The question presented is whether in a prosecution under this provision the Government must prove that the defendant knew

¹The statute provides in relevant part:

"[W]hoever knowingly uses, transfers, acquires, alters, or possesses coupons or authorization cards in any manner not authorized by this chapter or the regulations issued pursuant to this chapter shall, if such coupons or authorization cards are of a value of \$100 or more, be guilty of a felony and shall, upon the first conviction thereof, be fined not more than \$10,000 or imprisoned for not more than five years, or both, and, upon the second and any subsequent conviction thereof, shall be imprisoned for not less than six months nor more than five years and may also be fined not more than \$10,000 or, if such coupons or authorization cards are of a value of less than \$100, shall be guilty of a misdemeanor, and, upon the first conviction thereof, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than \$1,000. In addition to such penalties, any person convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 2015(b)(1) of this title."

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 6, 12-13

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

Circulated: _____

Recirculated: MAY 6 1985

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5108

FRANK LIPAROTA, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

[May —, 1985]

JUSTICE BRENNAN delivered the opinion of the Court.

The federal statute governing food stamp fraud provides that "whoever knowingly uses, transfers, acquires, alters, or possesses coupons or authorization cards in any manner not authorized by [the statute] or the regulations" is subject to a fine and imprisonment. 7 U. S. C. § 2024(b).¹ The question presented is whether in a prosecution under this provision the Government must prove that the defendant knew

¹The statute provides in relevant part:

"[W]hoever knowingly uses, transfers, acquires, alters, or possesses coupons or authorization cards in any manner not authorized by this chapter or the regulations issued pursuant to this chapter shall, if such coupons or authorization cards are of a value of \$100 or more, be guilty of a felony and shall, upon the first conviction thereof, be fined not more than \$10,000 or imprisoned for not more than five years, or both, and, upon the second and any subsequent conviction thereof, shall be imprisoned for not less than six months nor more than five years and may also be fined not more than \$10,000 or, if such coupons or authorization cards are of a value of less than \$100, shall be guilty of a misdemeanor, and, upon the first conviction thereof, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than \$1,000. In addition to such penalties, any person convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 2015(b)(1) of this title."

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

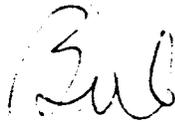
May 9, 1985

Dear Chief,

My opinion in Liparota v. United States, No. 84-5108, is to come down on Monday next, May 13. I'll not be present that day. Would you be good enough to announce it for me? The vote, as you may recall, is 6-2, with Byron and you in dissent and Lewis out of the case.

Thank you very much.

Sincerely,



The Chief Justice

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 23, 1985

84-5108 - Liparota v. United States

Dear Bill,

I am considering writing a dissent in
this case and in any event would concur only
in the result.

Sincerely yours,

B.R.W.

Justice Brennan

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice White

Circulated: MAY 2 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5108

FRANK LIPAROTA, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

[May —, 1985]

JUSTICE WHITE, dissenting.

Forsaking reliance on either the language or the history of § 2024(b), the majority bases its result on the absence of an explicit rejection of the general principle that criminal liability requires not only an *actus reus*, but a *mens rea*. In my view, the result below is in fact supported by the statute's language and its history, and it is the majority that has ignored general principles of criminal liability.

I

The Court views the statutory problem here as being how far down the sentence the term "knowingly" travels. See *ante*, at 5, n. 7. Accepting for the moment that if "knowingly" does extend to the "in any manner" language today's holding would be correct—a position with which I take issue below—I doubt that it gets that far. The "in any manner" language is separated from the litany of verbs to which "knowingly" is directly connected by the intervening nouns. We considered an identically phrased statute last Term in *United States v. Yermian*, 468 U. S. — (1984). The predecessor to the statute at issue in that case provided: "[W]however shall knowingly and willfully . . . make . . . any false or fraudulent statements or representations . . . in any matter within the jurisdiction of any department or agency of the United States . . . shall be fined." *Id.*, at —, n. 6. We found that under the "most natural reading" of the stat-

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

STYLISTIC and pp. 1, 9

From: Justice White

Circulated: _____

Recirculated: MAY 7 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5108

FRANK LIPAROTA, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

[May —, 1985]

JUSTICE WHITE, with whom THE CHIEF JUSTICE joins,
dissenting.

Forsaking reliance on either the language or the history of § 2024(b), the majority bases its result on the absence of an explicit rejection of the general principle that criminal liability requires not only an *actus reus*, but a *mens rea*. In my view, the result below is in fact supported by the statute's language and its history, and it is the majority that has ignored general principles of criminal liability.

I

The Court views the statutory problem here as being how far down the sentence the term "knowingly" travels. See *ante*, at 5, n. 7. Accepting for the moment that if "knowingly" does extend to the "in any manner" language today's holding would be correct—a position with which I take issue below—I doubt that it gets that far. The "in any manner" language is separated from the litany of verbs to which "knowingly" is directly connected by the intervening nouns. We considered an identically phrased statute last Term in *United States v. Yermian*, 468 U. S. — (1984). The predecessor to the statute at issue in that case provided: "[W]hoever shall knowingly and willfully . . . make . . . any false or fraudulent statements or representations . . . in any matter within the jurisdiction of any department or agency of the United States . . . shall be fined." *Id.*, at —, n. 6.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 19, 1985

Re: No. 84-5108-Liparota v. U.S.

Dear Bill:

Please join me.

Sincerely,

J.M.
T.M.

Justice Brennan

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 22, 1985

Re: No. 84-5108, Liparota v. United States

Dear Bill:

For now, in this case, I shall await further writing,
if there is any.

Sincerely,



Justice Brennan

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS



CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

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

May 6, 1985

7:29 3-704 28

Re: No. 84-5108, Liparota v. United States

Dear Bill:

You have persuaded me, and I join.

Sincerely,

Justice Brennan

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE HANCOCK/LEI DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 18, 1985

84-5108 Liparota v. United States

Dear Bill:

Please add at the end of the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

Lewis

Justice Brennan

lfp/ss

cc: The Conference



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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

84 MA 25 89 April 25, 1985

Re: No. 84-5108 Liparota v. United States

Dear Bill,

Please join me.

Sincerely,

A birthday present!

Justice Brennan

cc: The Conference

RECEIVED THE COMMISSION OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 18, 1985

Re: 84-5108 - Liparota v. United States

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

W

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 19, 1985

No. 84-5108 Liparota v. United States

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Brennan

Copies to the Conference