

United States of America v. Norby Walters

997 F.2d 1219 (1993)

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In this mail fraud case, Norby Walters, a sports agent, designed a scheme where collegiate athletes sign contracts stating Walters would represent them if they went pro. In exchange, Walters provided the athletes with money and cars. The contracts were dated for the end of the athlete's eligibility period to allow the athletes to continue to play on the collegiate level and thus increasing their chance to go pro. Seeking the advice of sports attorneys, Walters was advised that the plan violated NCAA rules but not any statutes.

When a player did not uphold his contract or return the gifts, Walters physically threatened him; as a result, Walters and his business partner, Lloyd Bloom, were indicted for conspiracy, predicated on extortion, and mail fraud. A jury convicted Walters and Bloom, however, the United States Court of Appeals reversed and the Defendants were re-tried. Walters entered into a plea agreement and the conspiracy charges were dismissed.

The Prosecution contends that when the athletes signed eligibility forms that were then mailed to the Big Ten conference, this resulted in Walters committing mail fraud. Mail fraud is defined as whoever devises a scheme to defraud, for the purpose of obtaining money or property, by means of false pretenses, and then causes any matter to be sent by way of the Postal Service. The Supreme Court has taken this definition one step further by stating that a mailing by a third party suffices if it is "incident to an essential part of the scheme."

The use of the mail system has to be a part of the fraud. Here, the prosecution asserts that mailing the forms to the Big Ten was essential because had the NCAA not sent the forms, the team would have been barred from playing and thus would have spoiled the athletes pro prospects and ultimately, Walters chance at representing the athletes and making a profit.

The question turns on whether Walters caused the universities to use the mail system. The court found no evidence that Walters actually knew that the college would mail the athletes' forms. Ultimately, the forms verifying the eligibility of the athletes to play did not help Walters plan succeed; the mailing to the Big Ten Conference had nothing to do with the plans success.

Mail fraud requires that schemes be for money or property. The prosecution contends that Walters made the universities lose money, which is property, since the universities continued to keep the athletes on scholarship. However, the rule requires that the defendant receive the benefit of the money or property and here, the players received the benefit and not Walters.

The Court of Appeals reversed the decision holding the prosecution is making criminals out of cheaters and although Walter's actions were morally wrong, it did not support a conviction. Only a scheme to obtain money or other property from the victim by fraud violates the mail fraud rule.