

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

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DORKJACOB,)
 Petitioner,)
 v.)
UNITED STATES,)
 Respondent.)
- - - - -

Pages: 1 through 21
Place: Washington, D.C.
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1 P R O C E E D I N G S

2 (9:47 p.m.)

3 JUSTICE MARSHALL: We'll hear argument from the
4 respondent this evening in No. 05-63, DorkJacob versus
5 United States.

6 General Irish.

7 GEN. IRISH: Justice Marshall, and may it
8 please the Court:

9 The case before us is a question of the
10 administration of 18 U.S.C. §401; more specifically to
11 the case at hand: subsection (1). It reads "Misbehavior
12 of any person in its presence or so near thereto as to
13 obstruct the administration of justice." As we provided
14 in our merits brief, the word misbehavior is used in its
15 broad term.

16 Webster's Pocket Dictionary defines it as to
17 "fail to conduct oneself in an acceptable way"; Merriam-
18 Webster defines it as "to conduct oneself badly or
19 improperly."

20 JUSTICE ROBERTS: Counsel, --

21 JUSTICE WHITE: Do you consider leaving in the
22 middle of a trial to be misbehavior?

23 JUSTICE ROBERTS: -- you say that misbehavior
24 is defined "broadly" in the statute at issue. Could you
25 clarify what you mean by that? Is there such a thing as
26 a "narrow" definition?

1 JUSTICE WHITE: You can answer Justice Roberts
2 first.

3 GEN. IRISH: In law, I believe there is,
4 Justice Roberts. I'm unable to give an example off the
5 top of my head; but I am willing to contact you about it
6 on a later date. But for arguments sake; a broad
7 definition would encompass a large amount of activities,
8 while narrow would be more specific.

9 JUSTICE ROBERTS: This is a criminal citation,
10 yes?

11 GEN. IRISH: Yes, Your Honor, as listed in my
12 briefs.

13 JUSTICE ROBERTS: This Court along with several
14 of the circuits has said that criminal contempts require
15 a degree of intent. There's disagreement on the level
16 of that intent required, but it's required. Is your
17 argument that the petitioner intended to misbehave here?
18 Or do you think intent is not dispositive in this case?

19 GEN. IRISH: You raise a valid point, Your
20 Honor. It would seem by that line of thought, I have
21 erred in labelling it as a criminal contempt. A missed
22 element of research I suppose. However I would argue
23 that some citations could be issued with lack of intent,
24 rather by the circumstances of the actions leading to
25 the citation being issued.

26 JUSTICE ROBERTS: So the position of the United
27 States is that the contempt was civil? Because that

1 changes a lot in this case. I don't see how this
2 contempt was issued as a coercive action. It seems to
3 me it was fairly punitive, as criminal contempts are.

4 I would like to know how someone can intend
5 for their phone to glitch during a trial. If intent
6 isn't important, where do we draw the line? Am I to be
7 cited with contempt if my internet disconnects during a
8 trial?

9 GEN. IRISH: To be more specific, the
10 petitioner in this case uses his phone to attend trial.
11 He has used this repeatedly and has repeatedly left
12 trials because of such. He has chosen to use defunct
13 equipment to complete his job. I will stand that the
14 contempt must be criminal as indeed it was used as a
15 punishment. However I will suggest that in special
16 circumstances, intent may be absent as found here.

17 JUSTICE WHITE: I'd like to interject here.
18 There have been other rulings on similar matters.

19 Are you familiar with Offutt v. United States?
20 It's alright if you're not.

21 JUSTICE ROBERTS: Okay, so let's restyle my
22 hypothetical.

23 JUSTICE GORSUCH: A question if I may, from
24 Justice Stewart.

25 JUSTICE ROBERTS: If I know I have bad
26 internet, should I just stop practicing law? I feel as
27 though you're asking this Court to sanction punishing

1 individuals for events outside of their control. I
2 would like you to give us a reason to do so.

3 GEN. IRISH: I will return to that question as
4 I do answer a hypothetical like that in an example given
5 later in arguments, Your Honor. But to summarize
6 quickly, if you consistently have bad internet and you
7 know you can't attend trials without it crashing you
8 should stop practicing law.

9 JUSTICE GORSUCH: I believe Justice White had a
10 question.

11 JUSTICE WHITE: Are you familiar with Offutt v.
12 United States?

13 GEN. IRISH: No, I am not, Your Honor.

14 JUSTICE WHITE: Alright. The Court in that
15 case distinguished two general categories of contempts
16 issued under 18 U.S.C. §401(1). The first form is where
17 there is wrongful intent. And the second recognized
18 that when the conduct is "clearly blameworthy," the
19 contempt requirements are satisfied.

20 My question is, do you consider "clearly
21 blameworthy" to mean clearly at the fault of the person
22 being cited?

23 GEN. IRISH: Yes, Your Honor, I would.

24 JUSTICE WHITE: Okay. Would you say that the
25 petitioner is "clearly blameworthy"? Excuse me, was
26 "clearly blameworthy" at the time of the citation?

1 GEN. IRISH: For his use of constantly defunct
2 equipment, knowing full well he is unable to sustain a
3 trial without disconnecting when his job entails such, I
4 would make him clearly blameworthy for the consequences.

5 JUSTICE WHITE: Alright.

6 JUSTICE GORSUCH: The D.C. Circuit has held
7 that behavior that is "clearly wrongful" can result in a
8 contempt being issued under 401(1), but the 7th Circuit
9 has held that someone can only be held in contempt under
10 401(1) if they were acting with wrongful intent. What
11 standard should this Court adopt?

12 GEN. IRISH: In relation to the answer I just
13 gave, I would suggest this court takes the standing of
14 the D.C. Circuit; furthermore, I do give a suggestion to
15 this Court near the end of my arguments.

16 JUSTICE GORSUCH: One more question.

17 GEN. IRISH: Please.

18 JUSTICE GORSUCH: Does the respondent believe
19 the petitioner acted with wrongful intent?

20 GEN. IRISH: I do not believe he acted with
21 wrongful intent, but under the pretenses of the answers
22 given above, I would find him clearly blameworthy for
23 the obstruction of the administration of justice he has
24 caused.

25 JUSTICE ROBERTS: But that's not a good
26 position for you to be in, is it? This case to me seems
27 very silly, and unfortunate. You seem to want us to

1 sanction criminally citing individuals for events
2 necessarily not brought on by themselves.

3 And you haven't answered my question on where
4 we draw the line here.

5 GEN. IRISH: Your Honor, if this was a case
6 where the petitioner left once and was punished, I would
7 stand with you. However, it is not.

8 JUSTICE ROBERTS: It seems that if we allow
9 someone to be cited criminally for a glitching phone, a
10 glitching phone he did not ask for, we might as well
11 open the floodgates and allow anyone to be cited if
12 something wrong happens that was not of their own doing.

13 I want you to give me an answer on where we
14 draw the line here. And how.

15 GEN. IRISH: The petitioner has a history of
16 using his phone, with my experience with him he insists
17 on "discord jury trial" because his phone can't handle
18 the courthouse.

19 JUSTICE ROBERTS: So why did the judge not
20 allow it? Are we going to punish lawyers for trying to
21 show up to court?

22 GEN. IRISH: If I may, interrupt you, and I
23 pardon myself if this comes off as "cheeky" --

24 JUSTICE MARSHALL: General, you have 10 minutes
25 remaining.

1 JUSTICE ROBERTS: Your argument's end line
2 seems to be, "if you can't 'afford' to practice under my
3 standards, you can stop practicing law."

4 GEN. IRISH: -- but if you hired a plumber to
5 fix your sink, would you not want him to be punished if
6 he broke your sink and as an excuse he gave "I don't
7 have a wrench to fix your sink"?

8 JUSTICE ROBERTS: I don't see how it would be
9 reasonable for us to uphold someone being punished for
10 something that happens to all of us.

11 GEN. IRISH: You are suggesting that the
12 parties can decide the venue on where justice can be
13 administered. I disagree with that strongly; it is the
14 decision of the court where the court presides.

15 JUSTICE ROBERTS: I am saying to you that this
16 game is playable on a phone.

17 GEN. IRISH: Your Honor, while I would love to
18 continue debating, I am on a limited time scale.

19 JUSTICE ROBERTS: Nothing in the record
20 indicates that something important made it so the judge
21 could not accommodate the parties on a discord, and the
22 petitioner had a deadline to meet. He went on a phone.

23 GEN. IRISH: If you have a question, please
24 ask, but I do need to say what I need to say.

25 JUSTICE ROBERTS: This game is and has been for
26 a long time now playable on phones.

1 Why should we punish people for playing the
2 game and glitching? And I haven't received an adequate
3 answer yet on my hypothetical: If I have poor internet,
4 and I disconnect a lot, should I be sentenced to prison
5 repeatedly?

6 GEN. IRISH: Because if you can't do the job
7 you sign up to do, you should be punished when you can't
8 do the job --

9 JUSTICE ROBERTS: That's not for us to decide,
10 and that's not the issue in this case.

11 GEN. IRISH: -- especially when your job deals
12 with people's lives and "being sentenced to prison."
13 You'd want a police officer to be able to enforce the
14 law, and to be punished if he's not able to. I fail to
15 understand how this is different.

16 Are my answers to your satisfaction, Your
17 Honor?

18 JUSTICE ROBERTS: The power of contempt exists
19 to vindicate a court's authority. Does someone's phone
20 glitching, something they didn't choose to happen,
21 somehow infringe on the court's authority?

22 GEN. IRISH: Your Honor, my answers will not
23 change no matter how much you ask; I'm sorry for
24 becoming agitated but I am on a limited time scale.

25 JUSTICE MARSHALL: Five minutes remaining.

26 JUSTICE ROBERTS: And lastly -- I know you've
27 been asked this, but I'd like a very concise answer --

1 this Court has ruled that intent is required in criminal
2 contempts. If your position is against the notion that
3 intent is required, are you asking us to overrule
4 ourselves?

5 If so, do you have a persuasive justification
6 for doing so?

7 GEN. IRISH: This Court has vacated, and
8 changed rulings before; I don't see why this would be
9 any different.

10 If you'd allow me to write my full arguments,
11 maybe your questions would answer themselves. I will
12 strongly ask that you allow me to give my arguments,
13 Your Honor; this debate is getting us nowhere.

14 To continue my original arguments: There is an
15 expected behavior while speaking in Court. For the best
16 example; the proper, acceptable and expected behavior
17 would be for the petitioner to turn up for a hearing
18 before this Court.

19 JUSTICE ROBERTS: You are here to be asked
20 questions and answer them. I would respectfully ask
21 that you answer my question.

22 GEN. IRISH: Similarly while in trial he is
23 expected to remain at the trial, to have ability to
24 argue at the trial, and to remain orderly. His decision
25 to remain in a career that he does not have the
26 equipment to support was made absent from duress, at
27 free will. Therefore, come better or worse, he should

1 be expected, like every American, to face the
2 consequences of his decisions.

3 Respectfully, I have, Your Honor. Multiple
4 times. You are repeating your question, the answer will
5 not change; all this debate is doing is slowing my
6 arguments --

7 JUSTICE ROBERTS: No, I don't believe that you
8 have. I want you to give us a reason why our precedent
9 in requiring intent was wrong.

10 GEN. IRISH: -- and not allowing me to satisfy
11 the rest of the Court.

12 JUSTICE ROBERTS: And a justification for
13 overruling it.

14 GEN. IRISH: I have answered that; and my
15 further arguments will also satisfy it, in my opinion.
16 To continue:

17 If the expected behavior is to remain at the
18 trial, to misbehave must be to constantly leave the
19 trial. This is exactly how the petitioner acted.
20 Regardless of the fact that his phone couldn't handle
21 the game. If he chooses to hold a career that involves
22 being at the Courthouse, he should have the necessary
23 equipment to do so. Another example can be drawn: if
24 someone's career involved flying an aircraft, they
25 should have the qualifications to be a pilot. Albeit a
26 qualification is not a physical item, the same reasoning
27 can be drawn.

1 The respondent offers an examination to the
2 Court. To examine the actions of an individual to
3 determine the lawfulness of a contempt citation under 18
4 U.S.C. §401(1). Firstly, did the cited act in a manner
5 opposite to the expected, acceptable behavior? In this
6 case, he did by leaving the trial multiple times, while
7 you are expected to remain at the trial. The second
8 prong being, did the misbehavior obstruct the
9 administration of justice? Once again, in this case it
10 absolutely did. The misbehavior caused multiple pauses
11 in the trial, and eventually a mistrial had to be
12 declared.

13 Finally, we ask the Court to ignore the
14 question proposed from the petitioner regarding evidence
15 on the citation. Answering this question would not bear
16 a difference on the outcome of the case; as mentioned in
17 our reply brief.

18 The United States urges the Court to find in
19 our favor; I believe we have given more than enough
20 textual and linguistic evidence to support our proposals
21 both before you today, and the briefs provided to you
22 over the last few days.

23 JUSTICE MARSHALL: One minute remaining.

24 GEN. IRISH: I'll take a question if a member
25 has one.

1 JUSTICE ROBERTS: "To misbehave must be to
2 constantly leave the trial." My problem is there's no
3 standard here.

4 JUSTICE WHITE: Do you think that it is our
5 place (the Judiciary) to decide what should and should
6 not be in law, rather than what is in law? To put that
7 in perspective, do you believe that we should decide
8 what people should be cited for, rather than whether the
9 issuer of the citation had the actual authority to cite
10 them for it, pursuant to statute?

11 JUSTICE MARSHALL: Time, but I'll allow counsel
12 to answer the question.

13 GEN. IRISH: Thank you, Justice Marshall.

14 Justice White, I do not believe this Court is
15 making new law; rather deciding the legality of the
16 decisions of courts below this, and interpreting the
17 language used in the statute, specifically 18 U.S.C.
18 §401.

19 JUSTICE WHITE: So is that a no?

20 GEN. IRISH: Your question does not allow for a
21 satisfactory yes or no answer, Your Honor.

22 JUSTICE WHITE: Alright, thank you.

23 JUSTICE MARSHALL: We are adjourned.

24 (Whereupon, at 10:22, p.m., the Court
25 adjourned, to hear petitioner's arguments at a later
26 date.)

27

1 P R O C E E D I N G S

2 (9:04 p.m.)

3 CHIEF JUSTICE HOLMES: We'll hear argument from
4 the petitioner this evening in No. 05-63, DorkJacob v.
5 United States.

6 Mr. Jacob.

7 MR. JACOB: Mr. Chief Justice, and may it
8 please the Court:

9 I was cited with Contempt of Court by the
10 District Court for the District of Nevada for,
11 generally, misbehavior, when indeed the events behind
12 the citation itself was not of my own making, and
13 therefore, there was not intent on my part to cause
14 misbehavior and further cause the court below to declare
15 a mistrial.

16 JUSTICE WHITE: Was your absence from oral
17 arguments on July 17, 2018 another result of a real-life
18 circumstance?

19 MR. JACOB: Mr. Justice White, my absence from
20 oral arguments on July 17th was because of real life
21 circumstances, in which led me to forget about attending
22 oral arguments, in which I apologize to the Court for my
23 absence.

24 JUSTICE WHITE: Mhm.

25 JUSTICE STEWART: Mr. Jacob, the D.C. Circuit
26 has held that behavior that is "clearly wrongful" can
27 result in an contempt being issued under 401(1), but the

1 7th Circuit has held that someone can only be held in
2 contempt under 401(1) if they were acting with wrongful
3 intent. What standard should this court adopt?

4 MR. JACOB: The standard of which this Court
5 should adopt for §401 is that if a person in the
6 presence of a court who, in any way, obstructs justice
7 and there is wrongful intent on their part, that they
8 should be cited with contempt. The D.C. Circuit's
9 standard is weak and not exact.

10 JUSTICE WHITE: Would it be fair to say that
11 leaving in the middle of a trial effectively halts the
12 trial? Yes or no?

13 MR. JACOB: Yes, Justice White.

14 JUSTICE WHITE: Is causing the stoppage of a
15 trial an obstruction of the administration justice?

16 Yes or no?

17 MR. JACOB: Yes, but if the person who
18 obstructed the administration of justice did not have
19 the wrongful intent to cause such, then they shouldn't
20 be cited with contempt.

21 JUSTICE KAGAN: Mr. Jacob, in what manner did
22 you leave the trial?

23 MR. JACOB: Justice Kagan, I was attending the
24 trial via the Roblox app on a mobile device of which
25 automatically after a few minutes shuts down for no
26 reason that I could find at the time, nor now.

1 CHIEF JUSTICE HOLMES: So, to be clear, you
2 leaving the trial was beyond your control?

3 MR. JACOB: Yes, and if it was not beyond my
4 control, I would of simply apologized to the Court and
5 would have suffered the penalty.

6 JUSTICE WHITE: Despite you knowing full and
7 well the consequences of leaving? Since you did, in
8 fact, do it before, didn't you? United States v.
9 Ryphen, in case you forgot.

10 Excuse me, --

11 MR. JACOB: I did not know before that my
12 device automatically after a few minutes shuts down the
13 game until I updated Roblox, and the circumstances
14 around United States v. Ryphen are completely different
15 to this.

16 JUSTICE WHITE: -- allow me to rephrase.
17 Despite you knowing full well the consequences of trying
18 a case on a cell phone? To be specific.

19 MR. JACOB: I legitimately thought that I could
20 attend the trial with little to no problems on my mobile
21 device, and I was proven horrifically wrong.

22 JUSTICE WHITE: How did trying a case on a
23 phone work out for you? Good or bad?

24 Oh, never mind, you answered that.

25 So, knowing the potential consequences, you
26 decided to do it again? Would it be fair to say that
27 that was negligent?

1 MR. JACOB: Yes, because when I was counsel for
2 the defense in United States v. Ryphen, I had little to
3 no problems until the new Roblox mobile app update.

4 CHIEF JUSTICE HOLMES: Mr. Jacob --

5 JUSTICE WHITE: And would it also be fair to
6 say that because you knew of the potential outcome that
7 you intentionally came on an unstable device to try the
8 case?

9 CHIEF JUSTICE HOLMES: -- I don't need you to
10 get into any specifics, but is there any real-life
11 reason you had to use a phone?

12 JUSTICE WHITE: Or maybe not even
13 intentionally, maybe even knowingly -- to put it softly.

14 MR. JACOB: Intentionally or knowingly came to
15 the trial on a unstable device? No. My device is
16 stable in other apps and games, but apparently not
17 Roblox and I did not learn until now.

18 Mr. Chief Justice, I had to use a mobile
19 device because I currently do not own a computer.

20 JUSTICE WHITE: So a cell phone.

21 CHIEF JUSTICE HOLMES: Alright, so this was
22 something beyond your control again?

23 MR. JACOB: Yes, Mr. Chief Justice.

24 And yes, Justice White, a Huawei H1611
25 "Ascend."

26 JUSTICE WHITE: Seriously, even though you knew
27 beforehand the possible outcome?

1 MR. JACOB: I did not know that Roblox would
2 crash on my device until after the trial of
3 ManSlaughter_Ian. And, for the record, I do not intend
4 on using my mobile device for anymore trials.

5 JUSTICE WHITE: When was United States v.
6 Ryphen?

7 JUSTICE GORSUCH: Did you inform the judge of
8 your inability to maintain presence at the trial?

9 MR. JACOB: I do not have an exact date, but it
10 was before the trial, yes.

11 JUSTICE WHITE: So you did know that ROBLOX
12 could crash. You just lied.

13 MR. JACOB: Justice Gorsuch, I did as noted in
14 Petitioner's Appendix A.

15 And Justice White, I did not know Roblox could
16 crash on my device since I do not believe that I ever
17 crashed in the trial of Ryphen.

18 JUSTICE MARSHALL: How many times did you
19 disconnect during the trial?

20 MR. JACOB: I do not exactly remember, but
21 about three times.

22 JUSTICE MARSHALL: Your device had not
23 experienced anything like that before the trial,
24 correct?

25 MR. JACOB: Also, if I may: the citation itself
26 lacks evidence. Justice Scalia said in his dissent in

1 Ex parte HaCtzKomi that "relying alone on the stated
2 purpose of a citation would prove inclusive."

3 I do not believe so, Justice Marshall.

4 JUSTICE WHITE: Did you ever disconnect midst a
5 trial before? Particularly using a phone.

6 MR. JACOB: I do not exactly remember, but
7 maybe at least one time.

8 JUSTICE WHITE: You said before that you
9 didn't, but I just wanted to be sure.

10 MR. JACOB: I believe that I didn't, but I
11 could be wrong.

12 JUSTICE STEWART: Did the judge certify that he
13 saw "contemptuous conduct" from you?

14 MR. JACOB: But in light of this recent trial,
15 I may of in fact disconnected from any one of trials at
16 least one time. Justice Stewart, could you clarify on
17 what you mean by "certify"?

18 JUSTICE STEWART: The Federal Rules of Criminal
19 Procedure state that "notwithstanding any other
20 provision of these rules, the court (other than a
21 magistrate judge) may summarily punish a person who
22 commits criminal contempt in its presence if the judge
23 saw or heard the contemptuous conduct and so certifies;
24 a magistrate judge may summarily punish a person as
25 provided in 28 U.S.C. §636(e). The contempt order must
26 recite the facts, be signed by the judge, and be filed
27 with the clerk."

1 MR. JACOB: Justice Stewart, he did not certify
2 that exactly. He simply cited me with Contempt and
3 sentenced me to six days in federal prison concurrent
4 with AoS. And because Judge snowbleed did not record
5 the proceedings in question, we cannot know for sure if
6 he did certify such and summarily punished me per 28
7 U.S.C. § 636(e).

8 JUSTICE STEWART: Thank you, I have no further
9 questions at this time.

10 MR. JACOB: If there are no further questions.

11 CHIEF JUSTICE HOLMES: Thank you, Mr. Jacob.

12 The case is submitted.

13 (Whereupon, at 9:32 p.m., the case was
14 submitted.)

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