

tippee could be held civilly liable and criminally guilty for tipping, in violation of Section 10(b) and Rule 10b-5.

In the following case, the court found an insider criminally liable for insider trading and tipping.



CASE 17.1 Insider Trading and Tipping

United States v. Bhagat

436 F.3d 1140, Web 2006 U.S. App. Lexis 3008 (2006)
United States Court of Appeals for the Ninth Circuit

"The fact that this evidence was all circumstantial does not lessen its sufficiency to support a guilty verdict."

—Rawlinson, Circuit Judge

Facts

Atul Bhagat worked for NVIDIA Corporation (Nvidia). Nvidia competed for and won a multi-million-dollar contract to develop a video game console (the Xbox) for Microsoft Corporation. Upon receiving the news, Nvidia's chief executive officer (CEO) sent company-wide e-mails announcing the contract award, advised Nvidia employees that the Xbox information should be kept confidential, and imposed a trading blackout on the purchase of Nvidia stock by employees for several days.

Within roughly twenty minutes after the final e-mail was sent, Bhagat purchased a large quantity of Nvidia stock. Bhagat testified that he read the e-mails roughly forty minutes after he purchased the stock. Less than one-half hour after Bhagat made his purchase, his friend Mamat Gill purchased Nvidia stock. Bhagat denied having told anyone about the Xbox contract before the information was made public.

The United States brought criminal charges against Bhagat, charging him with insider trading and tipping. Bhagat stuck with his story regarding his purchase of Nvidia stock and denied tipping Gill about the Xbox contract. Based on circumstantial evidence, the jury convicted Bhagat of insider trading and tipping. Bhagat appealed.

Issue

Is Bhagat criminally guilty of insider trading and tipping?

Language of the Court

To convict Bhagat of insider trading, the government was required to prove that

he traded stock on the basis of material, nonpublic information. The government offered significant evidence to support the jury's conclusion that Bhagat was aware of the confidential X-Box information before he executed his trades. The X-Box e-mails were sent prior to his purchase. The e-mails were found on his computer. Finally, Bhagat took virtually no action to divest himself of the stock, or to inform his company that he had violated the company's trading blackout.

To convict Bhagat of tipping Gill, the government was required to prove that the tipper, Bhagat, provided the tippee, Gill, with material, inside information, prior to the tippee's purchase of stock. Bhagat and Gill were friends, Gill purchased stock shortly after Bhagat, and Gill's purchase was his largest purchase of the year.

Decision

The U.S. Court of Appeals upheld the U.S. District Court's judgment, finding Bhagat criminally guilty of insider trading and tipping. The U.S. Court of Appeals remanded the case to the U.S. District Court for sentencing of Bhagat.

Case Questions

Critical Legal Thinking

What is insider trading? Explain. What is tipping? Explain.

Ethics

Do you think Bhagat committed the crimes he was convicted of? Why or why not?

Contemporary Business

What percentage of insider trading do you think the government catches?