

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED
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U.S. DISTRICT COURT
TAMPA, FLORIDA

UNITED STATES OF AMERICA

v.

CASE NUMBER: 8:03-CR-77-T-30TBM

HATIM NAJI FARIZ
_____ /

**DEFENDANT HATIM NAJI FARIZ'S MOTION TO DISMISS COUNT 44
OF THE INDICTMENT**

Defendant, HATIM NAJI FARIZ, by and through undersigned counsel, respectfully moves this Honorable Court to dismiss Count 44 of the Indictment for failure to sufficiently plead a violation of 18 U.S.C. § 1952(a)(2) and (3), and 18 U.S.C. § 2, pursuant to Federal Rule of Criminal Procedure 7(c)(1), and states the following:

1) Count 44 of the Indictment alleges that Mr. Fariz, on or about December 9, 2002, "did knowingly and willfully use a facility ... in interstate commerce with the intent to (a) commit any crime of violence to further any unlawful activity, that is extortion and money laundering ... and, (b) otherwise promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of said unlawful activity, namely extortion and money laundering, and thereafter did promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of said unlawful activity..."

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2) Other than the incorporation of Part A of Count One of the Indictment (“Introduction”), Paragraph 43(255) of the Indictment constitutes the sole basis for Count 44, and reads as follows:

On or about December 9, 2002, HATIM NAJI FARIZ, who was in the Middle District of Florida, had a telephone conversation with a magazine reporter who was outside the State of Florida. HATIM NAJI FARIZ complained that a recent article regarding a terrorist attack in Hebron improperly failed to attribute the attack to the PIJ. HATIM NAJI FARIZ then stated that he was about to start working on his Ph.D. in computer science at the University of South Florida.

3) Paragraph 43(255) fails to allege facts that constitute the elements of 18 U.S.C. § 1952(a)(2) and (3), and 18 U.S.C. § 2.

4) Paragraph 43(255) fails to allege facts that adequately put Mr. Fariz on notice as to how this communication constitutes intent to commit a crime of violence or further extortion or money laundering, nor how this communication related to the purpose or goal of extortion or money laundering.

5) The government’s failure to adequately allege an offense in Count 44 of the Indictment will prejudice Mr. Fariz by thwarting his ability to adequately prepare a defense.

MEMORANDUM OF LAW

Rule 7(c)(1) of the Federal Rules of Criminal Procedure states that an indictment “must be a plain, concise, and definite written statement of the essential facts constituting the offense charged ...” In order to sustain a conviction under 18 U.S.C. §§ 1952(a)(2) and (3), the government must prove that Mr. Fariz traveled in interstate or foreign commerce or used the mail or any facility in interstate or foreign commerce, with the intent to distribute the

proceeds of unlawful activity or commit any crime of violence to further any unlawful activity.

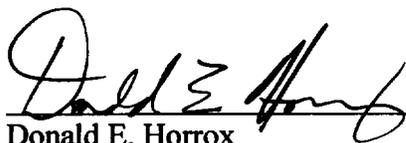
Other than incorporating the background section of Count One, Count 44 solely relies upon the factual allegations of Paragraph 43(255). Paragraph 43(255) describes a telephone conversation in which Mr. Fariz allegedly takes issue with a magazine's accuracy in reporting the news, and allegedly states that he is about to take courses at a local university. Paragraph 43(255) provides no context to this telephone call, makes no allegation that Mr. Fariz had prior knowledge of the Hebron attack, makes no allegation that Mr. Fariz was in any manner involved in the planning or execution of the Hebron attack, makes no effort to explain how Mr. Fariz's statement regarding his educational plans relates to this case, and otherwise fails to inform Mr. Fariz of how his conduct violates the relevant criminal statute. Rather, this paragraph merely recounts a facially innocent telephone conversation - nothing more.

As a result, Count 44 alleges no facts constituting the elements of 18 U.S.C. §§ 1952(a)(2) and (3), and fails to provide "a plain, concise, and definite written statement of the essential facts constituting the offense charged." Fed. R. Crim. P. 7(c)(1). This Count should therefore be dismissed.

WHEREFORE, Defendant requests that his motion be granted as stated.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of September, 2003, a correct copy of the foregoing has been furnished by hand delivery to Walter E. Furr, Assistant United States Attorney, 400 North Tampa Street, Suite 3200, Tampa, Florida 33602 and to the following by U.S. Mail:

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