

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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UNITED STATES OF AMERICA

v.

Case No. 8:03-CR-77-T-30TBM

HATIM NAJI FARIZ
_____ /

**DEFENDANT FARIZ' MOTION TO QUASH SECTION (b) OF
PARAGRAPH 26 OF THE INDICTMENT
FOR FAILURE TO STATE A LEGAL BASIS FOR RELIEF**

The Defendant Hatim Naji Fariz, through counsel, requests that the Court quash section (b) of paragraph 26 of the indictment upon the following grounds:

1) Paragraph 26 of the indictment alleges a pattern of racketeering activity as defined in 18 U.S.C. § 1961(1), (5). Among other predicate acts, in section (b) it is alleged that the defendants committed "multiple acts involving extortion in violation of Florida Statutes 836.05, 777.011 and 777.04."

2) In paragraph 29, the indictment alleges the means to effect the predicate extortion as follows:

The enterprise members would and did commit acts of violence, intimidation, and threats against Israel, its inhabitants and others, including murders and suicide bombings, and solicit and cause others to do so, with the intent to drive Israel out of the territory from the Jordan River to the Mediterranean Sea and to end any influence of the United States in the Middle East.

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3) These alleged means fail to state a factually sufficient basis which, if proven, would constitute an act involving extortion, attempted extortion, or extortion conspiracy as required in 18 U.S.C. § 1961(1)(A). See generally Fed. R. Crim. P. 7(c)(1) (“The indictment . . . must be a plain, concise, and definite written statement of the essential facts constituting the offense charged . . .”); Russell v. United States, 369 U.S. 749, 82 S. Ct. 1038, 8 L.Ed.2d 240 (1962) (holding that indictment must allege facts sufficient in law to support a conviction). Specifically, the indictment fails to allege that the defendants sought to obtain, or obtained, any property from the alleged victim.

4) Further, the indictment fails to allege facts which, if proven, would constitute a violation of Florida Statutes § 836.05, 777.011 or 777.04. First, the alleged victim of extortion in the indictment is Israel, which is not a person as required in Florida Statutes § 836.05. Second, assuming an extortion occurred, the State of Florida would have no jurisdiction over a crime committed in Israel or the “Occupied Territories.”

MEMORANDUM OF LAW

To establish the offense of extortion, the government must show that a defendant obtained legal interest in another’s property through force, fear or threats. Scheidler v. National Org. for Women, 537 U.S. 393, 123 S. Ct. 1057, 1065-67, 154 L.Ed.2d 991 (2003). In contrast, the crime of coercion “involves the use of force or threat of force to restrict another’s freedom of action.” Id. at 1066.

In Scheidler, the Supreme Court considered whether anti-abortion protesters had committed the RICO predicate act of extortion by engaging in a nationwide effort to shut

down abortion clinics through disruption of the clinic's operations and intimidation of clinic employees and patients. The Court held that, notwithstanding the criminal conduct of the protesters, their conduct did not constitute extortion:

Likewise, petitioners' counsel readily acknowledged at oral argument that aspects of his clients' conduct were criminal. But even when their acts of interference and disruption achieved their ultimate goal of "shutting down" a clinic that performed abortions, such acts did not constitute extortion because petitioners did not "obtain" respondents' property. Petitioners may have deprived or sought to deprive respondents of their alleged property right of exclusive control of their business assets, but they did not acquire any such property. Petitioners neither pursued nor received "something of value from" respondents that they could exercise, transfer, or sell.

123 S. Ct. at 1065-66 (footnote omitted).

In the instant case, the indictment makes no allegation that the defendants obtained, or sought to obtain, legal title to any property owned by Israel, the United States, or any other supposed victim. Specifically, the indictment alleges that the defendants intended "to drive Israel out of the territory from the Jordan River to the Mediterranean Sea and to end any influence of the United States in the Middle East." There is no allegation that the defendants sought to obtain the property for themselves, much less that they sought legal title to such property. Rather, as in Scheidler, at most, they sought to disrupt Israel's occupation of such property. Extortion would not lie under those facts.

Next, on several grounds, the indictment fails to state facts which, if proven, would establish a violation of the State of Florida extortion statute and be an offense "chargeable

under State law.” The State of Florida has no jurisdiction over the alleged extortion committed in Israel or the Occupied Territories. Florida law only prohibits the extortion of “money or any pecuniary advantage,” objectives not alleged in the indictment. Lastly, the alleged victims, the nations of Israel and the United States, are not “persons” as required by Florida Statutes § 836.05.

In defining “racketeering activity,” 18 U.S.C. § 1961(1)(A) includes “extortion . . . chargeable under State law . . .” as a RICO predicate. In Count I, paragraph 26(b), the indictment alleges as a predicate offenses, “multiple acts involving extortion in violation of Florida Statutes 836.05, 777.011 and 777.04.” Section 836.05 is entitled “Threats; extortion.” Section 777.011 is entitled “Principle in the first degree.” Section 777.04 is entitled “Attempts, solicitation, and conspiracy.”

Criminal jurisdiction in Florida is defined in Florida Statutes § 910.005. It provides:

- (1) *A person is subject to prosecution in this state for an offense that she or he commits, while either within or outside the state, by her or his own conduct or that of another for which the person is legally accountable, if:*
 - (a) *The offense is committed wholly or partly within the state;*
 - (b) *The conduct outside the state constitutes an attempt to commit an offense within the state;*
 - (c) *The conduct outside the state constitutes a conspiracy to commit an offense within the state, and an act in furtherance of the conspiracy occurs in the state;*
 - (d) *The conduct within the state constitutes an attempt or conspiracy to commit in another jurisdiction an offense under the laws of both this state and the other jurisdiction; or*

(e) The conduct constitutes a knowing violation of s. 286.011.

(2) *An offense is committed partly within this state if either the conduct that is an element of the offense or the result that is an element, occurs within the state.* In homicide, the “result” is either the physical contact that causes death, or the death itself; and if the body of a homicide victim is found within the state, the death is presumed to have occurred within the state.

(3) An offense that is based on an omission to perform a duty imposed by the law of this state is committed within the state, regardless of the location of the offender at the time of the omission.

(emphasis added to pertinent portions).

Thus, Florida has jurisdiction over the substantive offense of extortion if the offense is committed “wholly or partly within the state.” “Partly” is defined as at least one element of the offense occurring within Florida. Deaton v. Dugger, 635 So.2d 4, 6 (Fla. 1993).

Although there is no pattern jury instruction, a reading of Florida Statutes § 836.05 shows the following elements are necessary to plead and prove extortion:

- 1) a verbal or written communication;
- 2) which threatens to -
 - a) Accuse another of a crime, or
 - b) injure another person, their property, or their reputation, or
 - c) expose another person to disgrace, or
 - d) expose any secret affecting another, or
 - e) impute any deformity or lack of chastity to another person;

- 3) with the intent to extort money or any pecuniary advantage whatsoever.¹

In the instant case, none of the elements of the substantive offense of extortion are alleged to have occurred within the State of Florida. The alleged threats were made by the Palestinian Islamic Jihad (PIJ) in the Middle East, thousands of miles from Florida. Florida simply has no jurisdiction over such claims.

The indictment also appears to allege attempted extortion and extortion conspiracy, in somewhat “catch all” fashion. These grounds also fail.

Initially, the State of Florida does not recognize the offense of attempted extortion. Achin v. State, 436 So. 2d 30, 31 (Fla. 1982). Therefore, it cannot be a predicate offense.

Extortion conspiracy is also not sufficiently alleged to show that Florida would have jurisdiction. Florida jurisdiction of conduct outside the state exists in only two scenarios. First, jurisdiction attaches if the conspiracy is to “commit an offense within the state” Fla. Stat. § 910.005(c). Here, the alleged conspiracy was to commit extortion in Israel and the Occupied Territories, not in Florida.

Second, there is Florida jurisdiction if “conduct within the state constitutes . . . conspiracy to commit in another jurisdiction an offense under the laws of both this state and the other jurisdiction” Fla. Stat. § 910.005(d). As will be argued in more detail, infra,

¹ Section 836.05 further criminalizes the actions from parts 1 and 2 above if done “with intent to compel the person so threatened, or any other person, to do any act or refrain from doing any act against his or her will” As observed in Scheidler, such acts constitute coercion rather than extortion. Coercion “involves the use of force or threat of force to restrict another’s freedom of action.” 123 S. Ct. at 1066.

the allegations in the indictment would not constitute extortion under Florida law, because Florida only recognizes extortion of “money or any pecuniary advantage whatsoever.” Fla. Stat. § 836.05. Additionally, there is no allegation in the indictment that the defendant’s conduct would constitute a crime in the Occupied Territories or Israel.²

Next, under Florida law, only threats made to obtain “money or any pecuniary advantage whatsoever . . .” constitute extortion. Threats to compel persons to act, or not act, against their will are coercion and therefore cannot be a RICO conspiracy predicate. Thus, the alleged threats to compel Israel to leave the Occupied Territories and to end the United States’ influence in the Middle East cannot constitute extortion under Florida law.

In Scheidler, the Supreme Court made clear the distinction that extortion refers to the obtaining of property, while coercion is based on forcing another person to act, or not act, against their will. 123 S. Ct. at 1066, 1069. Moreover, for the purposes of 18 U.S.C. § 1961(1), a state extortion statute violation can only suffice as a RICO conspiracy predicate to the extent it prohibits the taking of property. Id. at 1068-69.

Accordingly, since the only property referred to in Florida Statutes § 836.05 is “money or anything of pecuniary value whatsoever,” and no such objective is alleged in the indictment, the State of Florida would have no jurisdiction. Thus, there would be no extortion “chargeable under state law.” 18 U.S.C. § 1961(1).

² While earlier decisions have indicated that RICO does not require absolute compliance with the terms of the state statute, see United States v. Watchmaker, 761 F.2d 1459, 1469 (11th Cir. 1985), in the instant case, the use of the Florida statutes goes beyond what Congress intended in the RICO statute.

Finally, extortion under Florida law would not lie because the indictment alleges that the victims extorted were the nations of Israel and the United States rather than a “person” as required by Florida Statutes § 836.05. Assuming arguendo that the coercion portion of Section 836.05 would qualify as a RICO predicate if properly pled, that statute still requires that the party forced to “act or refrain from doing any act” is a “person” rather than a nation. Because Fla. Stat. § 836.05 is a penal statute, it must be narrowly construed. United States v. Lanier, 520 U.S. 259, 117 S. Ct. 1219, 137 L.Ed.2d 432 (1997); Wallace v. State, 724 So.2d 1176 (Fla. 1998); Fla. Stat. § 775.021(1). Thus the term “person” in Section 836.05 should not, and may not, be expanded to include whole nations.

WHEREFORE the Defendant, Hatim Naji Fariz, requests that the Court quash paragraph 26(b) from the indictment and preclude the admission at trial of any evidence to support such paragraph.

Respectfully Submitted,

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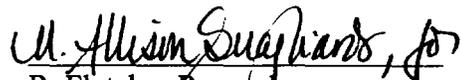
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of October, 2003, a correct copy of the foregoing has been furnished by hand delivery to Terry Zitek, 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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