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APPENDIX A

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16-1422

UNITED STATES OF AMERICA

v.

MARIJAN CVJETICANIN,

Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.N.J. Crim. No. 3-14-cr-00274-001)
District Judge: Hon. Michael A. Shipp

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
February 6, 2017

Before: MCKEE, COWEN, and FUENTES, *Circuit Judges*.

(Opinion filed: July 21, 2017)

OPINION*

* This disposition is not an opinion of the full court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

McKEE, *Circuit Judge*.

Marijan Cvjeticanin appeals the District Court's dismissal of his Motion to Dismiss the Superseding Indictment and the District Court's denial of his Motion for New Trial. Cvjeticanin also challenges the District Court's loss calculation and the amount of restitution he was ordered to pay. For the reasons that follow, we will affirm the District Court in its entirety.

I

A. Denial of Cvjeticanin's Motion to Dismiss the Superseding Indictment and Motion for New Trial

1. Motion to Dismiss Superseding Indictment

We exercise plenary review over legal conclusions in reviewing denial of a motion to dismiss an indictment, and we review factual findings for clear error.¹ A motion to dismiss an indictment is a "challenge to the sufficiency of the indictment," and must therefore "be decided based on the facts alleged within the four corners of the indictment, not the evidence outside of it."²

In this case, Cvjeticanin maintains that the conduct the Superseding Indictment described amounted to no more than a breach of contract between Automatic Data Processing and Broadridge, on the one hand, and Flowerson, on the other hand, and that the District Court therefore erred in not dismissing the Superseding Indictment because it criminalized a civil dispute.

¹ *United States v. Huet*, 665 F.3d 588, 594 (3d Cir. 2012).

² *United States v. Vitillo*, 490 F.3d 314, 321 (3d Cir. 2007).

We disagree. The allegations in this Superseding Indictment were sufficient under Rule 7(c)(1) of the Federal Rules of Criminal Procedure to allege a violation of 18 U.S.C. § 1341.³ The Superseding Indictment charged nine separate instances of mail fraud, each linked to the mailing of a false invoice billing either ADP or Broadridge for thousands of dollars of non-existent services. These allegations, if proven, “constitute a violation of the law that [Cvjeticanin] [was] charged with violating,”⁴ and “could result in a guilty verdict.”⁵ Indeed, the allegations in this case *did* result in a guilty verdict for Cvjeticanin. The Superseding Indictment never alleges a contract, or a breach thereof, and Cvjeticanin’s contention that the allegations amount to a civil contract dispute is meritless. His criminal conduct arose in the context of a contractual relationship (as is true of many mail frauds), but his attempt to redefine that criminal conduct into a mere breach of contract is a frivolous argument the District Court properly rejected.

2. Motion for New Trial

³ Under Fed. R. Crim. P. 7(c)(1), “[t]he indictment . . . must be a plain, concise, and definite written statement of the essential facts constituting the offense charged.” “An indictment is generally deemed sufficient if it: 1) contains the elements of the offense intended to be charged, 2) sufficiently apprises the defendant of what he must be prepared to meet, and 3) allows the defendant to show with accuracy to what extent he may plead a former acquittal or conviction in the event of a subsequent prosecution.” *United States v. Rankin*, 870 F.2d 109, 112 (3d Cir. 1989) (internal quotation marks, citation, and brackets omitted).

⁴ *United States v. Small*, 793 F.3d 350, 352 (3d Cir. 2015).

⁵ *United States v. Bergrin*, 650 F.3d 257, 268 (3d Cir. 2011). *See also United States v. Panarella*, 277 F.3d 678, 685 (3d Cir. 2002) (explaining that an indictment does not state an offense sufficiently if the specific facts that it alleges “fall beyond the scope of the relevant criminal statute, as a matter of statutory interpretation”).



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