

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

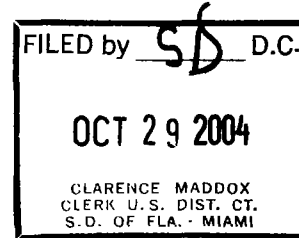
UNITED STATES OF AMERICA,

CASE NO. 04-10012-CR-KING

v.

PETER GOLDSMITH and
MICHELE GESLIN

Defendants.



ORDER GRANTING DEFENDANTS' MOTION TO DISMISS INDICTMENT

THIS CAUSE is before the Court upon Defendants' Motion to Dismiss the Indictment for Failure to State an Offense, and the Unconstitutionality of 31 C.F.R. § 515.572 as Applied to the Charged Conduct, filed September 24, 2004.¹

BACKGROUND

Defendants, Peter Goldsmith ("GOLDSMITH"), and Michele Geslin ("GESLIN"), are alleged to have provided information packets to individuals interested in participating in the "Third Annual Conch Republic Boat Race" from Key West, Florida, to Cuba. The informational packets contain a list of ports off the coast of Cuba where the participants could dock their boats. In order to enter the race, individuals were required to pay an entrance fee. The entrance fees collected in association with the race, were used for the following expenses: (1) t-shirts for the participants (2) trophies for the participants, and (3) a bon voyage party for the participants in Key West, Florida.

¹ The United States filed its Response to both motions on October 8, 2004, and Defendants filed their Reply on October 12, 2004.

Defendants are charged in a two count indictment with: knowingly and willfully violating rules and regulations issued pursuant to the "Trading with the Enemy Act,"; and knowingly and willfully providing travel services to other persons in connection with travel by such persons to and within Cuba in violation of 50 U.S.C. § 16(a), 19 U.S.C. § 2, 31 C.F.R. § 515.572(a)(1).² According to counsel, this is the first case brought under 31 C.F.R. § 515.572(a)(1).

Defendants argue that the indictment should be dismissed because the indictment fails to allege that they engaged in the type of conduct prohibited by the regulation charged in the indictment. Defendants contend that they were not "trading with the enemy." Defendants assert that the regulation at issue, 31 C.F.R. § 515.572(a)(1), does not apply to persons who act in concert with other independent travelers for the purpose of association in travel to Cuban ports. Defendants further argue that § 515.572(a)(1) does not encompass persons who do not disembark onto Cuban territory, but instead merely travels to parts without disembarking.

² 31 C.F.R. § 515.572(a)(1): Authorization of travel service provider. The following persons wishing to provide services in connection with travel to Cuba are "travel service providers" for purposes of this part: Travel agents, ticket agents, commercial and noncommercial organizations that arrange travel to Cuba; tour operators; persons arranging through transportation to Cuba; persons chartering an aircraft or vessel on behalf of others in Cuba; and persons arranging hotel accommodations, ground transportation, local tours, and similar travel activities on behalf of others in Cuba. Travel service providers must obtain authorization from the Office of Foreign Assets Control before providing services with respect to travel to Cuba. The list stated above should not be considered exhaustive, as other persons may be "travel service providers" within the meaning of this part. Opinions may be obtained from the Office of Foreign Assets Control concerning the applicability of this licensing requirement in individual cases.

LEGAL STANDARD

An indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged. Fed. R. Crim. P. 7(c)(1). A party may raise by pretrial motion any defense, objection, or request that the court can determine without a trial of the genuine issue. Fed. R. Crim. P. 12(b)(2). The court may hear, at any time, a motion that the indictment or information fails to invoke the court's jurisdiction or to state an offense. Fed. R. Crim. P. 12(b)(3)(B). Federal Rule of Criminal Procedure 12(b)(2) authorizes dismissal of an indictment if its allegations do not suffice to charge an offense. United States v. DeLaurentis, 230 F.3d 659, 661 (3rd Cir. 2000). An indictment's allegations are sufficient if they include all elements of the offense and briefly describe the facts of the commission of the offense. United States v. Adkinson, 135 F.3d 1365, 1375 (11th Cir. 1998). The true test is "whether the factual allegations in the indictment are sufficient to charge the offense as a matter of law." United States v. Devegter, 198 F.3d 1324, 1327 (11th Cir. 1999). An indictment which omits an essential element of the crime charged must be dismissed as fatally defective. United States v. Musgrave, 444 F.2d 755, 764 (5th Cir. 1971).

DISCUSSION

The indictment in this case is insufficient to charge Defendants with a "trading with the enemy" violation. The statutory restrictions on trading with specified nations does not extend to barring coordinated travel by independent participants in a sailboat race. See 31 C.F.R. § 515.572(a)(1). The language of the criminal prohibition does not allude to the "non-commercial" activities that are issue in this case. The indictment does not allege, that the registration fee the participants paid Defendants, served anything more than expenditures unrelated to any

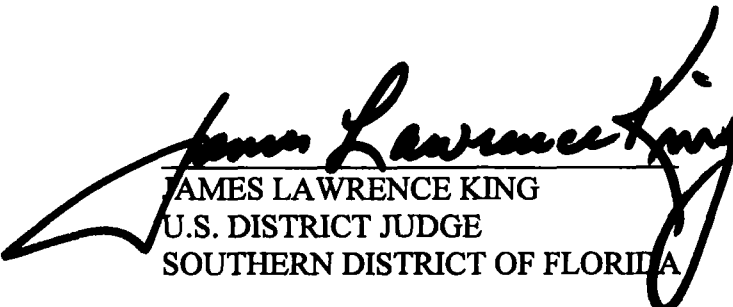
transactions with Cuba. All of the participant's registration fees were used to purchase (1) t-shirts for the participants (2) trophies for the participants, and (3) a bon voyage party for the participants, held in Key West, Florida. The regulations cited in the indictment concern trading with Cuba by travel agents who provide travel to persons unable to independently travel to Cuba. The indictment does not allege that Defendants used the registration fees in a transaction or trade with Cuba, "provided" transportation to Cuba, or that Defendants "provided" lodging in Cuba.

The purpose of 31 C.F.R. § 515.572(a)(1) is to prevent economic aid to Cuba. The indictment fails to allege that Defendants' actions resulted in money being spent in Cuba or that Cuba was in any way benefitted financially. The non-commercial, independent travel activity alleged in this indictment, is insufficient to charge Defendants as "travel service providers" within the meaning of 31 C.F.R. § 515.572.

Accordingly, after a careful review of the record and the Court being otherwise fully advised, it is

ORDERED and ADJUDGED that Defendants' Motion to Dismiss Indictment be, and the same is hereby, GRANTED. The Indictment is DISMISSED without prejudice to the United States to seek a superceding indictment.

DONE and ORDERED in chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida, this 29th day of October, 2004.


JAMES LAWRENCE KING
U.S. DISTRICT JUDGE
SOUTHERN DISTRICT OF FLORIDA

cc: **Via Facsimile**

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