

12-1361-cr
United States v. DiMattina

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this court’s Local Rule 32.1.1. When citing a summary order in a document filed with this court, a party must cite either the Federal Appendix or an electronic database (with the notation “summary order”). A party citing a summary order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 1st day of July, two thousand fourteen.

PRESENT:

JOSÉ A. CABRANES,
SUSAN L. CARNEY,
CHRISTOPHER F. DRONEY,
Circuit Judges.

-----x
UNITED STATES OF AMERICA,

Appellee-Cross-Appellant,

-v.-

No. 12-1361-cr

FRANK DIMATTINA, A/K/A FRANKIE D, A/K/A FRANKIE
ARIANA,

Defendant-Appellant-Cross-Appellee.

-----x

FOR APPELLEE:

Susan Corkery, John J. Dennehy, Assistant
United States Attorneys, *for* Loretta E. Lynch,
United States Attorney for the Eastern
District of New York, Brooklyn, NY.

FOR DEFENDANT-APPELLANT:

Marc Fernich, Sarita Kedia, New York, NY.

Appeal from a judgment, entered April 3, 2012, of the United States District Court for the Eastern District of New York (Jack B. Weinstein, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is **VACATED** and the cause **REMANDED** for further proceedings consistent with this Order.

Defendant Frank DiMattina argues that his conviction for extortion is invalid because he did not “obtain” any property for purposes of the Hobbs Act. The Government, in its brief on appeal, agrees and concedes that the judgment must be vacated in all respects. The Government now seeks remand to the District Court “so that [it] can move to dismiss the indictment with prejudice under Rule 48(a) of the Federal Rules of Criminal Procedure.” Appellee Br. 11. We agree that is the appropriate course of action.

For the reasons set out above, we **VACATE** the April 3, 2012, judgment of the District Court and **REMAND** the cause for further proceedings consistent with this Order.

FOR THE COURT,
Catherine O’Hagan Wolfe, Clerk of Court




**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

ROBERT A. KATZMANN
CHIEF JUDGE

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

Date: July 01, 2014
Docket #: 12-1361cr
Short Title: United States of America v. DiMattina

DC Docket #: 1:11-cr-705-1
DC Court: EDNY (BROOKLYN)
DC Judge: Weinstein

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:

- * be filed within 14 days after the entry of judgment;
- * be verified;
- * be served on all adversaries;
- * not include charges for postage, delivery, service, overtime and the filers edits;
- * identify the number of copies which comprise the printer's unit;
- * include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
- * state only the number of necessary copies inserted in enclosed form;
- * state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
- * be filed via CM/ECF or if counsel is exempted with the original and two copies.

**United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007**

ROBERT A. KATZMANN
CHIEF JUDGE

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VERIFIED ITEMIZED BILL OF COSTS

Counsel for

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the

and in favor of

for insertion in the mandate.

Docketing Fee _____

Costs of printing appendix (necessary copies _____) _____

Costs of printing brief (necessary copies _____) _____

Costs of printing reply brief (necessary copies _____) _____

(VERIFICATION HERE)

Signature