NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-1820

ANNA RUSSO; TORRY ARGIRO,

Appellants

v.

JOSHUA LAMANCUSA, individually and in his capacity as Lawrence County District Attorney; RICHARD RYHAL, individually and in his capacity as Special Investigation Unit Detective

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On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil No. 2-21-cv-01891)
District Judge: Honorable Robert J. Colville

Argued on March 5, 2024

Before: JORDAN, PHIPPS, and FREEMAN, *Circuit Judges*

(Opinion filed: April 3, 2024)

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OPINION*

FREEMAN, *Circuit Judge*.

Anna Russo and Torry Argiro appeal the dismissal of their civil Racketeer Influenced and Corrupt Organizations Act ("RICO") claim against Joshua Lamancusa, the Lawrence County District Attorney, and Richard Ryhal, an officer in the Lawrence County Special Investigation Unit. We will affirm the dismissal as to Ryhal because the complaint did not allege a RICO claim against him. But the District Court dismissed the RICO claim against Lamancusa because it held that the predicate acts were not related. On that discrete issue, we disagree with the District Court, so we will vacate the part of the order dismissing the claim against Lamancusa and remand for further proceedings.

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

I

Lamancusa created and directs the Special Investigation Unit ("SIU")—a law enforcement task force comprised of officers from various police departments.[1] Ryhal is the titular head of the SIU but reports to Lamancusa. According to the plaintiffs, Lamancusa has used the SIU as a criminal enterprise to extort countless individuals under the guise of a legitimate law enforcement body. For the purposes of their RICO claim, they allege that Lamancusa and the SIU committed the following four predicate acts as part of the criminal enterprise.

The Luptak matter. Anna Russo owned ACRO Motors, a car dealership in Edinburg, Pennsylvania. Her son, Robert Luptak, managed the business. At some point before October 23, 2014, Lamancusa or the SIU instructed a confidential informant to plant illegal drugs in various locations, including inside a 1978 Buick Electra that they believed Luptak owned (but that actually belonged to Russo). Lamancusa and the SIU later confiscated the Buick Electra without an accurate warrant and never returned it to Russo. Additionally, on October 23, Lamancusa and the SIU searched Luptak's home and a residential property that Russo owned, seized items owned by various members of the Russo/Luptak family, and arrested Luptak on drug charges. They then coerced Luptak into consenting to a search of the ACRO Motors premises. There, they seized vehicles, valuables, and cash.

[1] We recount the facts as alleged in the complaint.

Lamancusa told Luptak that he would "ma[k]e all [of the] charges disappear like they never happened" if Luptak allowed him to "keep everything [the SIU] confiscated." App. 51. He added, "Why don't you jump onboard so I can welcome you to the family. This is what we do." App. 52.

Lamancusa sought Luptak's assistance in planting drugs on other individuals. Luptak declined, and his criminal charges proceeded to trial. He was convicted and sentenced to 11.5 to 23 years' imprisonment.

Some of the vehicles seized from ACRO Motors were never returned. Others were returned over four years after their seizure, but they were a "total loss" because their condition had deteriorated while in the SIU's possession. App. 54.

The Whiting matter. Bryan Whiting owned and operated several businesses in Lawrence County, including a roll-off dumpster company and a hotel. In late 2015, he decided to sell half of his roll-off business to two associates, James Mims (a close friend of Lamancusa) and Allen Porter.

In late 2015 or early 2016, Lamancusa met with Mims, Porter, and Whiting and accused Whiting of embezzling money from the roll-off company. Lamancusa then offered to refrain from prosecuting Whiting if Whiting agreed to allow Mims and Porter to become one-third partners in the business. Whiting eventually acquiesced. He transferred a majority of the company's stock to Mims and Porter and transferred his remaining shares to his wife.

In September 2017, members of the SIU arrested Whiting at the hotel that he owned. Ryhal arrived on the scene and another officer instructed him to drive Whiting to

the police station. Neither Ryhal nor Whiting knew why Whiting had been arrested. Once they arrived at the police station, Whiting was placed in a holding cell for three to four hours. Lamancusa then demanded his cooperation, and SIU officers interrogated him about drug activity in the area.

Whiting was eventually released without charges. The officers told him that there was no paperwork from the arrest and that "it was like it never really happened." App. 61.

Following Whiting's arrest, his wife—who feared future intimidation by Lamancusa and the SIU—sold her minority share of the roll-off company to Mims and Porter at a significant loss. Later that month, Whiting's hotel was sold at a tax sale without any notice to him or his wife.

The Argiro matter. In August 2019, Torry Argiro made a series of Facebook posts accusing Lamancusa of corruption. After he made these posts, his girlfriend falsely accused him of assault and he was arrested.

Upon his arrest, police questioned Argiro about the assault allegations and about drug dealing. They also said they believed the powder coat paint they saw in his vehicle was illegal drugs. Argiro denied being a drug dealer but accused Lamancusa of being one. Police then released Argiro but confiscated his vehicle.

A few days later, police told Argiro to retrieve his vehicle and said it had tested negative for narcotics. When he arrived at the police station, Ryhal arrested him and said the powder coat paint had tested positive for narcotics. Ryhal instructed another officer how to describe the paint in the case report: "just say it[']s heroin to spice it up." App. 66.

While Argiro awaited trial for his charges, Ryhal continued to harass him. Prosecutors also threatened to add additional charges if he did not take a plea deal. One of Lamancusa's associates even threatened to kill Argiro and his girlfriend if Argiro pursued allegations of harassment against Ryhal. Argiro eventually pleaded guilty to drug charges.

The T.F. matter. In November 2013, T.F. (who was then 17 years old) witnessed a shooting. Police asked T.F. for a statement about the shooting and then proceeded to beat her, charge her with several crimes, and place her in a juvenile facility. Children & Youth Services took her son and told her that she would get her child back if she agreed to testify against the shooter.

After T.F. was released from the juvenile facility, Lamancusa asked her to become a confidential informant for the District Attorney's Office. He also asked her for sexual favors, which she refused to give. Despite her refusal, Lamancusa continued to pressure her for sexual favors over the next several months.

In February 2015, T.F. was arrested and charged with drug-related crimes. Lamancusa's office seized her computer and television and her parents' vehicle, none of which were ever returned. Lamancusa again asked for sexual favors and told T.F. that she would go to prison and never see her son again if she did not comply. To placate him, T.F. falsely told Lamancusa that she would do him a "favor." App. 70. Lamancusa then arranged to have most of the charges dropped, shortened her probation, and expunged her juvenile record. T.F. never performed any sexual acts for Lamancusa.

In June 2016, T.F. testified against the shooter from the 2013 case. Her son was returned to her almost immediately afterward.

In February 2017, Lamancusa visited T.F. at her parents' house, sexually assaulted her, and forced her to delete text messages that the two had exchanged.

II

In November 2021, Russo sued Lamancusa in state court. She brought claims under RICO, codified at 18 U.S.C. § 1961 *et seq.*, and 42 U.S.C. § 1983. Lamancusa removed the case to the Western District of Pennsylvania and moved to dismiss. Before the court could rule on the motion, Russo amended her complaint twice and added Ryhal as a defendant, and Argiro was added as a plaintiff.[2] Both defendants then moved to dismiss, arguing that the complaint was untimely and failed to state any claims.

In April 2023, the District Court granted the motions to dismiss. It dismissed the section 1983 count as untimely and it dismissed the RICO count for failure to state a claim. Specifically, it concluded that the plaintiffs "failed to allege sufficiently related acts" to establish a pattern of RICO activity. *Russo v. Lamancusa*, 2023 WL 2758965, at *15 (W.D. Pa. Apr. 3, 2023). Because the complaint had already been amended twice, the Court dismissed it with prejudice.

The plaintiffs timely appealed the dismissal of the RICO claim only.

[2] While Ryhal is a named defendant in the caption of the second amended complaint, he is not named as a defendant in either count.

III[3]

We exercise plenary review of an order granting a motion to dismiss for failure to state a claim. *Rea v. Federated Invs.*, 627 F.3d 937, 940 (3d Cir. 2010). We must accept all factual allegations as true and construe the complaint in the light most favorable to the plaintiffs. *Id.*

IV

To plead a RICO claim under 18 U.S.C. § 1962(c), a plaintiff "must allege (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity."[4] *In re Ins. Brokerage Antitrust Litig.*, 618 F.3d 300, 362 (3d Cir. 2010) (quoting *Lum v. Bank of Am.*, 361 F.3d 217, 223 (3d Cir. 2004)). To establish a pattern, "a plaintiff must show that the racketeering predicates are related, *and* that they amount to or pose a threat of continued criminal activity." *Tabas v. Tabas*, 47 F.3d 1280, 1292 (3d Cir. 1995) (en banc) (quoting *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 239 (1989)). At a minimum, a pattern "requires at least two acts of racketeering activity, . . . the last of which occurred within ten years . . . after the commission of a prior act of racketeering activity." 18 U.S.C. § 1961(5).

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[3] The District Court had jurisdiction pursuant to 28 U.S.C. § 1331, and we have jurisdiction pursuant to 28 U.S.C. § 1291.

[4] An "'enterprise' includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4). "[R]acketeering activity" is defined to encompass broad categories of crimes, including "any act or threat involving . . . robbery, bribery, [or] extortion . . . which is chargeable under State law and punishable by imprisonment for more than one year." *Id.* § 1961(1).

Predicate acts are related if they "have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." *H.J. Inc.*, 492 U.S. at 240. This "test for 'relatedness' is broad." *Banks v. Wolk*, 918 F.2d 418, 422 (3d Cir. 1990). Indeed, the Supreme Court has observed that "Congress drafted RICO broadly enough to encompass a wide range of criminal activity, taking many different forms and likely to attract a broad array of perpetrators operating in many different ways." *H.J. Inc.*, 492 U.S. at 248–49. And we have observed that even "separately performed, functionally diverse[,] and directly unrelated predicate acts and offenses will form a pattern under RICO" if they have been undertaken in furtherance of a qualifying enterprise. *United States v. Bergrin*, 650 F.3d 257, 271 (3d Cir. 2011) (quoting *United States v. Eufrasio*, 935 F.2d 553, 566 (3d Cir. 1991)). Thus, "in many [civil RICO] cases plaintiffs will be able to withstand a facial attack on the complaint and have the opportunity to have their pattern allegations threshed out in discovery." *Swistock v. Jones*, 884 F.2d 755, 758 (3d Cir. 1989).

To be liable under section 1962(c), a defendant must have "participated in the operation or management of the enterprise itself." *Reves v. Ernst & Young*, 507 U.S. 170, 183 (1993).

A

We will affirm the dismissal of the RICO claim against Ryhal for one simple reason: the plaintiffs did not name him in the RICO count of the operative complaint.

See App. 72 (alleging a RICO violation only against "Joshua Lamancusa, in his official and individual capacity"); *Laurel Gardens, LLC v. Mckenna*, 948 F.3d 105, 116 (3d Cir. 2020) ("Generally, we may affirm on any ground supported by the record."). Ryhal is alleged to have played a role in the Argiro and Whiting matters, but he is not a named defendant in the actual RICO count. So the plaintiffs failed to plead Ryhal's RICO liability. *See Ed Peters Jewelry Co. v. C & J Jewelry Co.*, 124 F.3d 252, 276 (1st Cir. 1997) ("[T]he tortious interference claim against Fleet fails because [the plaintiff] did not name Fleet as a defendant in this count[.]"); *Rife v. Borough of Dauphin*, 625 F. Supp. 2d 212, 218–19 (M.D. Pa. 2008) (granting a motion to dismiss as to one defendant because the plaintiff's complaint did not name that defendant in any count).

B

In this appeal, Lamancusa challenges only the relatedness of the predicate acts alleged in the complaint. We conclude that the predicate acts are related.

The predicate acts satisfy at least three of the *H.J. Inc.* relatedness factors. First, the acts have "the same or similar . . . participants." *H.J. Inc.*, 492 U.S. at 240. Lamancusa participated in all four acts. Additionally, members of the SIU (which Lamancusa directs) participated in three of the four acts.

Second, the predicate acts have "the same or similar . . . methods of commission." *Id.* In each of the four acts, Lamancusa and/or members of the SIU used their official positions to pressure the victims under threat of criminal prosecution. Lamancusa told Luptak that he could make his drug charges "disappear like they never happened" if

Luptak permitted Lamancusa to keep the items he seized. App. 51. And Lamancusa offered to not prosecute Whiting for embezzlement if Whiting sold portions of his business to Lamancusa's associates. Through members of his office, Lamancusa threatened to add false charges to Argiro's criminal case if he did not plead guilty to drug crimes. And Lamancusa said he would send T.F. to prison to keep her away from her son if she did not perform sexual favors.

Third, two of the predicate acts resulted in Lamancusa's or the SIU's acquisition of personal property. *See* 18 U.S.C. § 1961(5) (defining a pattern to include "at least two acts of racketeering activity" within the required time frame). In the Luptak matter, Lamancusa orchestrated the mass seizure of vehicles, valuables, and cash belonging to Russo and members of the Russo/Luptak family. He then pressured Luptak into letting him keep the seized property. Similarly, in the T.F. matter, Lamancusa seized T.F.'s family's belongings, including a car and a computer, and never returned them.

H.J. Inc.'s list of relatedness factors is disjunctive, non-exhaustive, and requires only *sameness or similarity* of any factor. Given these broad requirements, and our duty to take all well-pleaded facts as true, we conclude that the plaintiffs have alleged enough relatedness to survive Lamancusa's motion to dismiss on that ground.

C

As the District Court observed, the alleged predicate acts in this case, "if proven to be true, are, of course, plainly disturbing violations of public trust." App. 30. Nonetheless, as with any case in this posture, "we do not inquire whether the plaintiffs

will ultimately prevail, only whether they are entitled to offer evidence to support their claims." *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996).

Moreover, our disposition of this appeal is narrow. In addition to the relatedness of the predicate acts, a RICO claim has several requirements.[5] The parties addressed none of those in their briefs. We therefore express no opinion on whether they are satisfied.

Further, Lamancusa has not developed an argument that he is entitled to prosecutorial immunity for his actions. In his brief, he mentioned immunity once: he stated (without elaboration) that "the behavior Russo and Argiro complain of would be the type of actions that would be entitled to prosecutorial immunity." Lamancusa Br. at 11. Similarly, he has not developed an argument that the *Heck v. Humphrey* favorable-termination rule applies to this case. *See Heck*, 512 U.S. 477, 486–87 (1994) (holding that a plaintiff seeking damages under 42 U.S.C. § 1983 for harm that would render a conviction invalid must prove that the conviction has been reversed, invalidated, or otherwise called into question). He mentioned *Heck* for the first time at oral argument. Oral Arg. at 18:59–19:30 (acknowledging that no court has applied *Heck* to civil RICO actions). These issues are not properly before us, so we express no views on them.

[5] First, there must be an "enterprise" as defined in the statute. 18 U.S.C. § 1961(4). Second, the crimes alleged in the complaint must qualify as "racketeering activity." *Id.* § 1961(1). Third, the complaint must allege that Lamancusa had a sufficient role in the operation or management of the enterprise to support RICO liability. *See Reves*, 507 U.S. at 183. And, the relatedness of predicate acts is not the only requirement for a "pattern of racketeering activity." The predicate acts must also amount to or pose a threat of continued criminal activity. *Tabas*, 47 F.3d at 1292.

* * *

For the foregoing reasons, we will affirm the part of the District Court's order dismissing the RICO claim against Ryhal, but we will vacate the part of the order dismissing the claim against Lamancusa and remand for further proceedings.