

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

United States of America,

v.

Criminal No.: 2:19-cr-00171

Robert James McCabe,

Defendant,

MOTION TO DISMISS COUNT 11 OF THE INDICTMENT PURSUANT TO F.R.C.P. 12(B)  
FOR FAILURE TO STATE THE OFFENSE

Comes now the Defendant, and pursuant to F.R.C.P 12(B) moves the Court to dismiss Count 11 of the indictment for the following reasons:

1. That the defendant was indicted on October 24, 2019 and charged in an 11 count indictment.
2. Count II charges the Defendant with the offense of conspiracy to commit money laundering in violation of 18 U.S.C. §1956(H), to-wit: That the defendant and Gerald Boyle conspired to commit laundering of monetary instruments involving the proceeds of a specified unlawful activity.
3. That the indictment alleges that Boyle wrote a check to McCabe for \$12,500.00 and left the payee blank. The check was then negotiated by co-conspirator #2.
4. The indictment fails to state an offense because it does not allege the source of the funds upon which the check was drawn were the proceeds of any unlawful activity.

As such the count is subject to dismissal pursuant to the Rule and the defendant so moves.

Respectfully submitted,

Robert James McCabe  
By Counsel

\_\_\_\_\_/s/\_\_\_\_\_  
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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of February, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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