

**30.4**  
**Interstate Transmission of an Extortionate Communication**  
**18 U.S.C. § 875(d)**

It's a Federal crime to knowingly send in interstate or foreign commerce a threat to damage another person's property or reputation.

The Defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt:

- (1) the Defendant knowingly sent a message in [interstate] [foreign] commerce containing a true threat [to damage the reputation] [to damage the property] of another;
- (2) the Defendant did so with the intent to extort money or something else of value to the Defendant.

[To transmit something in "interstate commerce" means to send it from a place in one state to a place in another state.]

[To transmit something in "foreign commerce" means to send it from a place in the United States to anyplace outside the United States.]

A "true threat" is a serious threat – not idle talk, a careless remark, or something said jokingly – that is made under circumstances that would lead a reasonable person to believe that the Defendant intended to [kidnap] [injure] another person.

To act with "intent to extort" means to act with the purpose of obtaining money or something of value from someone who consents because of fear or because of the wrongful use of actual or threatened force or violence.

A "thing of value" is anything that has value to the Defendant,

whether it's tangible or not.

The heart of the crime is intentionally sending a message in interstate or foreign commerce to extort something of value. The Government doesn't have to prove that the Defendant intended to carry out the threat or succeeded in obtaining the money or any other thing of value.

## **ANNOTATIONS AND COMMENTS**

18 U.S.C. § 875(d) provides that:

Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime [shall be guilty of an offense against the United States].

Maximum Penalty: Two (2) years imprisonment and applicable fine.

The language defining a "true threat" provides explanation and clarification as to the proper standard to be applied in determining whether a threat is a true threat or not. *See, e.g., United States v. Callahan*, 702 F.2d 964, 965 (11th Cir. 1983); *see generally Lucero v. Trosch*, 904 F. Supp. 1336, 1340 (S.D. Ala. 1995). In *United States v. Alaboud*, 347 F.3d 1293 (11th Cir. 2003), the Court of Appeals explained that:

A communication is a threat when in its context it would have a reasonable tendency to create apprehension that its originator will act according to its tenor. In other words, the inquiry is whether there was sufficient evidence to prove beyond a reasonable doubt that the defendant intentionally made the statement under such circumstances that a reasonable person would construe them as a serious expression of an intention to inflict bodily harm.

*Id.* at 1296-97 (internal citations, quotations, footnote and alterations omitted) (construing 18 U.S.C. § 875(c)).

In *United States v. Evans*, 478 F.3d 1332 (11th Cir. 2007), the Court of Appeals considered and rejected the argument that the "threat to injure" language contained

in 18 U.S.C. § 876(c) (which deals with mailing threatening communications) included only future threats. The Eleventh Circuit joined the Second, Third, and Fifth Circuits in holding that a future threat is not necessary and that the statute also applied to immediate threats of harm.

Under *United States v. Nilsen*, 967 F.2d 539, 543 (11th Cir. 1992), “thing of value” is a clearly defined term that includes both tangibles and intangibles.