

US DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FILED

JAN 29 2018

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

DOUGLAS F. YOUNG, Clerk
By
Deputy Clerk

UNITED STATES OF AMERICA)

v.)

JAKE C. FILES)

CRIMINAL NO. 2:18-CR-20001-001

18 U.S.C. §§ 1343, 1957, and 1344

INFORMATION

The Defendant, JAKE C. FILES, having waived in open court prosecution by indictment, the United States charges:

GENERAL ALLEGATIONS

At all times material to this Information:

1. Defendant FILES was a member of the Arkansas State Senate. Defendant FILES was elected to represent State Legislative District 8 in November 2010 and assumed office in January 2011. Defendant FILES also owned and operated FFH Construction, an Arkansas limited liability company involved in real estate development and construction in Fort Smith, Arkansas and elsewhere.

2. In or about 2012, Defendant FILES and an associate approached City of Fort Smith leaders and proposed a project called the River Valley Sports Complex ("RVSC").

3. The RVSC project contemplated the development of softball fields on land donated to the City of Fort Smith by the Chaffee Redevelopment District. The City of Fort Smith committed funding approximately \$1.6 million to the RVSC project.

4. The RVSC project had a target completion date of August 2015. Even though the City of Fort Smith has released approximately \$1 million to Defendant FILES and his associate, the RVSC project remains unfinished.

GENERAL IMPROVEMENT FUND

5. In or about August 2016, the City of Fort Smith convened a study session with Defendant FILES and his associate to discuss delays in the RVSC project. Around the time the study session took place, Defendant FILES asked the Administrator of the City of Fort Smith if he would be interested in securing a General Improvement Fund (GIF) grant from the Western Arkansas Planning and Development District (WAPDD), whose offices were located in Fort Smith, Arkansas, which is within the Western District of Arkansas.

6. In 2015, the Arkansas General Assembly had appropriated GIF money to the Arkansas Department of Finance and Administration for disbursement to the WAPDD to be utilized by the WAPDD for grants to promote economic and community development throughout the State of Arkansas. The GIF consisted of what was commonly referred to as “surplus” state revenues derived from various sources as specified by the General Assembly.

7. The City of Fort Smith, also located in the Western District of Arkansas, was eligible for GIF money.

8. As the elected Senator representing State Legislative District 8, Defendant FILES, in his official capacity as state senator, exerted substantial control and authority over a set amount of GIF money that had been appropriated for disbursement by the WAPDD and was allowed to direct and approve which eligible organizations would receive GIF money and in what amounts.

9. Pursuant to WAPDD protocol, any and all applications for GIF grants exceeding \$20,000.00 were required to include a minimum of three quotes from vendors bidding for the project or contract to be completed with the GIF money.

COUNT ONE
18 U.S.C. § 1343
(Wire Fraud)

10. The allegations contained in Paragraphs 1 through 9 of this Information are alleged as though fully set forth herein.

SCHEME TO DEFRAUD

11. From in or about August 2016 through and including on or about December 30, 2016, in the Western District of Arkansas, Fort Smith Division and elsewhere, Defendant JAKE C. FILES, did knowingly and intentionally devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and, for the purpose of executing such scheme and artifice, did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds, as set forth below.

OBJECT OF THE SCHEME

12. The object of the scheme to defraud was for Defendant FILES to obtain money and property from the WAPDD, to wit, GIF money appropriated to the City of Fort Smith, by making materially false and fraudulent representations to the WAPDD.

MANNER AND MEANS OF THE SCHEME

13. As a follow-up to his discussion with the Administrator of the City of Fort Smith regarding GIF money in August 2016, Defendant FILES assisted in the preparation of an application for the City of Fort Smith to receive \$46,500.00 in GIF money. The application

indicated that the GIF money would be spent “[t]o extend infrastructure to projects in the Planned Districts that are City Parks and other community resources.” Specifically, the funds were intended to “run utilities from the existing points to the buildings to facilitate city funds to be used to enhance park features rather than running utility lines.”

14. Defendant FILES sent the application in draft form to the Deputy Administrator of the City of Fort Smith via e-mail. The Deputy Administrator, in turn, reviewed, signed, and submitted the application to the WAPDD.

15. On December 2, 2016, a Project Manager at the WAPDD sent an e-mail to the Fort Smith City Administrator, the Fort Smith Deputy City Administrator, and Defendant FILES with the following note: “Attached is a copy of the signed grant. I will need 3 written quotes for this project before we can release the money.” Defendant FILES replied to the Project Manager’s e-mail noting that he would secure three quotes from the vendors.

16. In furtherance of the scheme to defraud and to obtain money and property, on December 29, 2016, Defendant FILES sent an e-mail transmission to the WAPDD Project Manager attaching the following three materially false and fraudulent bids for the purpose of securing the release of \$46,500 in GIF money for the RVSC project:

a. Using PERSON A’s name, address, and social security number, Defendant FILES prepared and submitted via interstate wire a bid in the amount of \$47,545.91 to the WAPDD Project Manager. PERSON A was an individual who had done construction work for Defendant FILES’ company, FFH Construction, since in or about January 2016.

b. Using COMPANY A’s name, Defendant FILES prepared and submitted via interstate wire a bid in the amount of \$60,165.91.

c. Using COMPANY B's name, Defendant FILES prepared and submitted via interstate wire communications a bid in the amount of \$54,145.91.

17. E-mail accounts with "me.com" addresses are associated with an email server registered to Apple, whose servers are located outside the State of Arkansas. Therefore, e-mails that Defendant FILES sent and received in the Western District of Arkansas while using the jxxxxxxxxs@me.com e-mail account were interstate wire communications.

18. Defendant FILES created all three materially false and fraudulent bids on his laptop computer and without securing actual cost estimates or legitimate work descriptions from any of the three purported bidders. Later that same day, on December 29, 2016, Defendant FILES sent the following e-mail to WAPDD's Project Manager: "Let me know if you need anything further. I can come pick up the check and deliver to [Fort Smith City Administrator] if that works."

19. Defendant FILES' signature block on his email transmissions stated the following at the end of his email messages: "Jake Files, FFH Construction LLC, State Senator District 8, 479.XXX.XXXX office, 479.XXX.XXXX mobile, jxxxxxxxxs@me.com." Defendant FILES sent and received these e-mail transmissions while in the Western District of Arkansas, Fort Smith Division.

20. On December 30, 2016, Defendant FILES sent to the WAPDD Project Manager an attachment to an e-mail from Defendant FILES' jxxxxxxxxs@me.com email account that was a W-9 Form containing PERSON A's name, address, social security number, and signature. Defendant FILES sent the e-mail with the attached W-9 form for the purpose of securing the release of \$46,500.00 in GIF money to the City of Fort Smith because Defendant FILES knew that the City of Fort Smith would, in turn, send the GIF money to PERSON A.

21. As a direct result of Defendant FILES' submission of the three fraudulent bids and the W-9 Form, the WAPDD released GIF funds in the amount of \$26,945.91 to the City of Fort Smith. This amount was subsequently disbursed to PERSON A and, ultimately, given to Defendant FILES as a result of his scheme to defraud and to obtain money and property.

EXECUTION OF THE SCHEME

22. On or about December 29, 2016, in the Western District of Arkansas, Fort Smith Division and elsewhere, Defendant FILES, for the purpose of executing the scheme described above, caused to be transmitted by means of wire communication in interstate commerce the signals and sounds described below:

Count	Date	Description
1	December 29, 2016	E-mail transmission attaching three fraudulent bids from email account jxxxxxxxxs@me.com to WAPDD Project Manager

All in violation of Section 1343 of Title 18 of the United States Code.

COUNT TWO **18 U.S.C. § 1957** **(Engaging in Monetary Transactions in Property** **Derived from Specified Unlawful Activity)**

23. The allegations contained in Paragraphs 1 through 9 and paragraphs 11 through 22 of this Information are re-alleged as though fully set forth herein.

24. On December 30, 2016, Defendant FILES sent a text message to the spouse of PERSON A, instructing PERSON A to open a bank account under PERSON A's name. Defendant FILES requested that PERSON A open a bank account to conceal Defendant FILES' involvement as the actual beneficiary of the anticipated disbursement of GIF money. Pursuant to Defendant FILES' instruction, PERSON A opened a savings account at Armstrong Bank in Fort

Smith, Arkansas, in the Western District of Arkansas. Armstrong Bank is a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.

25. Later that same day, the City of Fort Smith wire transferred \$26,945.91 to PERSON A's Armstrong Bank savings account. These funds constituted a portion of the \$46,500.00 GIF grant that was disbursed to the City of Fort Smith pursuant to Defendant FILES' fraudulent scheme to defraud.

26. At Defendant FILES' instruction, PERSON A withdrew \$25,931.91 of these funds as follows: \$14,000.00 in cash and \$11,931.91 in a cashier's check made payable to "FFH Construction." PERSON A then hand-delivered the cash and the cashier's check to Defendant FILES at Defendant FILES' office in Fort Smith. Defendant FILES deposited the \$11,931.91 cashier's check in a checking account ending in 849 at First National Bank in Fort Smith, Arkansas, a financial institution in the Western District of Arkansas whose deposits are insured by the Federal Deposit Insurance Corporation. The First National Bank checking account ending in 849 is controlled by Defendant FILES, as he has sole signatory authority on this account.

27. On or about December 30, 2016, in the Western District of Arkansas, Fort Smith Division and elsewhere, Defendant JAKE C. FILES, knowingly engaged in a monetary transaction affecting interstate commerce in criminally derived property of a value greater than \$10,000, such property having been derived from specified unlawful activity, that is wire fraud, in violation of Title 18, United States Code, Section 1343, to wit, on or about December 30, 2016, Defendant FILES deposited or caused to be deposited a check in the amount of \$11,931.91 made payable to Defendant FILES' company, FFH Construction, into his checking account at the First National Bank of Fort Smith, Arkansas.

28. The monetary transaction involved funds in or affecting interstate commerce because Defendant FILES deposited into his checking account at the First National Bank of Fort Smith, Arkansas, the \$11, 931.91 cashier's check that was criminally derived property of a value greater than \$10,000, and was drawn on funds from Armstrong Bank, an Oklahoma-based financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.

All in violation of Section 1957 of Title 18 of the United States Code.

COUNT THREE
18 U.S.C. § 1344
(Bank Fraud)

29. At all relevant times, First Western Bank was a financial institution located in the Western District of Arkansas whose deposits were insured by the Federal Deposit Insurance Corporation.

SCHEME TO DEFRAUD

30. In or about November 2016, in the Western District of Arkansas, Fort Smith Division and elsewhere, Defendant JAKE C. FILES, did knowingly, and with intent to defraud, execute a scheme and artifice to defraud First Western Bank to obtain moneys, funds, and other property owned by and under the custody and control of First Western Bank, by means of materially false pretenses, representations, and promises.

31. As a direct result of his scheme and artifice to defraud, Defendant FILES fraudulently obtained a loan in the amount of approximately \$56,746.55 from First Western Bank.

MANNER AND MEANS OF THE SCHEME

32. In September 2015, Defendant FILES contracted with a masonry company in Van Buren, Arkansas, to work on a construction project in Altus, Arkansas, that Defendant FILES and

his construction company were completing. The masonry company was owned by Businessman #1.

33. After the masonry work was done, Defendant FILES owed the masonry company \$55,000.00. When Businessman #1 requested payment from Defendant FILES, Defendant FILES told Businessman #1 that he had not yet been paid by the project owner. Businessman #1 contacted the project owner and learned that the owner had indeed paid Defendant FILES.

34. Businessman #1 contacted Defendant FILES again and demanded payment. Defendant FILES admitted to Businessman #1 that he had already spent the money owed to Businessman #1's company. Defendant FILES offered Businessman #1 a Skytrack forklift as a \$25,000.00 payment towards the \$55,000.00 that Defendant FILES owed the masonry company. Defendant FILES gave Businessman #1 a bill of sale dated March 2, 2016 for the Skytrack Forklift Model 6042, serial number 0160024397. Defendant FILES told Businessman #1 that there was no lien on the forklift and Businessman #1 took possession of the Skytrack Forklift Model 6042, serial number 0160024397.

35. On or about November 29, 2016, Defendant FILES signed a Security Loan Agreement with First Western Bank, a financial institution located in the Western District of Arkansas and whose deposits are insured by the Federal Deposit Insurance Corporation. Defendant FILES, personally, was the guarantor of the Commercial Security Agreement for loan 410760xxxx in the principal amount of \$56,746.55. Defendant FILES granted First Western Bank a security interest in the Skytrack Forklift Model 6042, serial number 0160024397, even though Defendant FILES was well aware at that time that he had sold the equipment to Businessman #1 in March 2016 for \$25,000.00 and Defendant FILES did not have possession of the forklift.

36. Defendant FILES knowingly made a material false and fraudulent representation to First Western Bank in connection with obtaining loan number 410760XXXX by concealing from First Western Bank that Defendant FILES had previously sold the Skytrack Forklift Model 6042, serial number 0160024397, to Businessman #1 and, therefore, Defendant FILES could not pledge this equipment as collateral securing loan number 410760XXXX.

37. Defendant FILES intentionally obtained money—specifically, \$56,746.55 in loan proceeds—that belonged to First Western Bank and that was under the custody and control of First Western Bank, a federally-insured financial institution located in the Western District of Arkansas, Fort Smith Division, by listing the Skytrack Forklift as collateral when Defendant FILES well knew that he neither owned nor possessed the equipment when he pledged it to First Western Bank, along with other collateral.

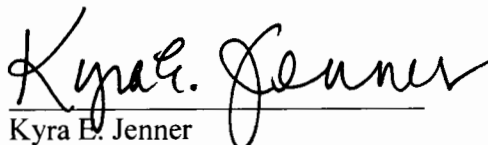
38. Defendant FILES did execute the above described scheme in obtaining \$56,746.55 owned by and under the custody and control of First Western Bank by means of false and fraudulent pretenses, representations, promises, and the concealment of material facts.

All in violation of Section 1344 of Title 18 of the United States Code.

Dated this 29th day of January, 2018.

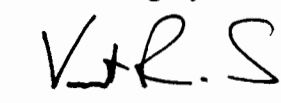
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