

White-Collar Federal Crimes: Theft, Fraud, & Laundering- Follow the Money

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Statutes

- 18 U.S.C. § 641: Theft of government funds
- 18 U.S.C. § 657: Embezzlement by a credit union employee
- 18 U.S.C. § 1341: Mail fraud
- 18 U.S.C. § 1343: Wire fraud
- 18 U.S.C. § 1028A: Aggravated Identity Theft
- 18 U.S.C. § 1956: Money Laundering
- 18 U.S.C. § 1957: Engaging in monetary transactions in property derived from specified unlawful activity

Theft of Government Funds

- Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or
- Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—

Theft of Government Funds: Simple Agreement Prosecutions

- Target letter
- Information
- Plea Agreement

Unemployment fraud

The United States Attorney charges that: Beginning on or about April 25, 2010, and continuing through on or about February 5, 2011, in the Eastern District of Tennessee, Defendant FRANK ZIMMERMAN, willfully and knowingly did embezzle, steal, purloin, and convert to his own use or the use of another, money of the United States or department or agency thereof, by obtaining more than \$1,000 from the Department of Labor, in violation of Title 18, United States Code, Section 641.

Why a federal case?

- The American Recovery and Reinvestment Act of 2009 authorized 100 percent federal funding for extended employment benefits from February 17, 2009, through December 31, 2013. Thus, 100 percent federal funds paid benefits authorized under that Act and during that authorization period.

Why a federal case?

- Although administered by the TN Department of Labor and Workforce Development, a state agency, the funds remained federal property because the federal government retained control over the funds including the requirement that the beneficiary certify his continued eligibility for the benefits and report any income received during the period weekly.

The punishments for the theft of government funds

- Shall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property in the aggregate, combining amounts from all the counts for which the defendant is convicted in a single case, does not exceed the sum of \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

Other punishments for the theft of government funds

- 18 U.S.C. § 3571(b)(3): Fine: “For a felony, not more than \$250,000.”
- 18 U.S.C. § 3571(b)(5): Fine: “For a Class A misdemeanor that does not result in death, not more than \$100,000.”
- 18 U.S.C. § 3559(a)(3): Classification: “The maximum term of imprisonment authorized is less than 25 years but ten or more years, as a Class C felony.”
- 18 U.S.C. § 3583(b)(2): Supervised release: “For a Class C or Class D felony, not more than three years.”

The elements for the theft of government funds

- The defendant knowingly [[embezzled] [stole] [converted to defendant's use] [converted to the use of another]] [money] [property of value] with the intention of depriving the owner of the use or benefit of the [money] [property];
- The [money] [property] belonged to the United States; and
- The value of the [money] [property] was more than \$1,000. If "the value of such property in the aggregate, combining amounts from all the counts for which the defendant is convicted in a single case, does not exceed the sum of \$1,000," the crime is a misdemeanor. 18 U.S.C. § 641.

Sample indictment for theft of government funds

- On or about the _____ day of _____, 2____, in the _____ District of _____, the defendant, _____, willfully and knowingly did steal and purloin _____, of the value of _____, of the goods and property of the United States, in violation of 18 U.S.C. § 641.

Theft of Governments Funds

Case Study

- United States v. Kathy Winters
- Investigating Agency: Comptroller of the Treasury (Michael Jarreau and Kevin Huffman) and the Tennessee Bureau of Investigation (Brad Nealon)
- Information

Theft of Governments Funds

Case Study

INFORMATION

The United States Attorney charges that:

Beginning on or about July 1, 2007, and continuing through on or about May 16, 2013, in the Eastern District of Tennessee, Defendant **KATHY ANN WINTERS**, willfully and knowingly did embezzle, steal, purloin, and convert to her own use or the use of another, money of the United States or department or agency thereof, by obtaining more than \$1,000 from the Department of Education, in violation of Title 18, United States Code, Section 641.

Theft of Governments Funds

Case Study: Facts

- The Tennessee Department of Education sponsors the Tennessee Attendance Supervisors Steering Committee (“TASSC”), which is an organization that provides training and information that aids school attendance personnel in improving their professional competencies. Defendant served as the TASSC treasurer. In or about fall 2012, the Tennessee Comptroller of the Treasury (“Comptroller”) became aware of irregularities in the TASSC bank account and an investigative audit followed.

Theft of Governments Funds

Case Study: Facts

- The audit revealed that while Defendant had access to TASSC funds, the TASSC bank account suffered \$82,636.79 in financial losses. During the investigative audit, investigators learned that Defendant also served Alcoa City School District as the federal projects' administrative assistant
- She was also the East Tennessee Attendance Supervisors Association ("ETASA") treasurer
- ETASA is an association that provides opportunities for the continuous study of attendance problems
- Investigators expanded the investigation scope to include these additional entities.

Theft of Governments Funds

Case Study: Facts

- The broadened investigation revealed that the Alcoa City School District suffered \$344,203.79 in financial losses and ETASA suffered \$1,236.36 in financial losses. The investigation revealed that the Alcoa City School District loss included federal government grant money paid to the school district for special education expenses and that the federal government continued to maintain some control over the funds once disbursed to the state. The investigation revealed further that there was a total loss of \$428,076.94 between the three entities.

Theft of Governments Funds

Case Study: Facts

- Investigators determined that Defendant was responsible for the total financial losses to the aforementioned entities and that she effectuated the taking of the funds by creating false invoices that demanded payment payable to TASSC or ETASA, forging an approving official's signature to the false invoices, and forwarding the forged, false invoices to Alcoa City for payment. Once Alcoa City rendered check payments based on the false invoices, Defendant endorsed the checks, and either deposited the funds into Defendant's personal account or into the TASSC or ETASA account and then withdrew the money through ATM withdrawals and checks made payable to Defendant.

Theft of Governments Funds

Case Study: Facts

- In addition to the invoice scheme, Defendant misused Alcoa City School District credit cards by making unauthorized personal charges on the credit cards and falsified travel reimbursement requests for unauthorized travel. In both instances, Defendant forged signatures of approving officials, and submitted the credit card billing statements and travel claims to the Alcoa City for payment. Defendant also caused various bank charges, including overdraft fees, ATM fees, and service charges to be assessed against TASSC, including approximately \$7,106.60, and ETASA, including approximately \$426.41, which are included in the total financial loss for each.

Theft of Governments Funds

Case Study: Facts

- On April 4, 2013, during a consensual and voluntary interview, Defendant described her fraud and summarized her fraud in a hand-written and signed confession that included the following. “I have been employed by Alcoa City Schools as an administrative assistant . . . I was also treasurer for TN Steering Committee and East TN Steering Committee. I often used funds from both accounts for personal gain. I would invoice for payment from the city finance office and deposit those checks in either the East TN account or the TN Steering account for my personal gain.

Theft of Governments Funds

Case Study: Facts

- “I would forge my supervisor’s (Debbie Smith) signature on the invoice for payment. I took cash from ATMs for my personal gain. I sometimes wrote checks to myself for personal gain from the steering account. I do not know how much I have taken. I purchased things for my personal gain from department[] stores and fuel for my vehicles. I have also paid my mortgage periodically and car notes. I have had family difficulties and needed to assist with my daughter and grandson’s bills. I used TN steering account funds to become a partner in a[n] exercise facility (Elite). I understand the things I have done were wrong.”

Theft of Governments Funds

Case Study: Abuse of Position

- Defendant abused her position of public trust in a matter that significantly facilitated the commission and concealment of the offense pursuant to USSG § 3B1.3.
- For sentencing purposes, Defendant agrees to be held responsible for a loss of more than \$400,000, but \$1,000,000 or less. It is believed that this loss amount reflects the United States' proof of the defendant's direct involvement in the taking of government funds at the time this agreement was executed.

Theft of Governments Funds

Case Study: Abuse of Position

- USSG § 3B1.3:
- “If the defendant abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense, increase by 2 levels.”

Theft of Governments Funds

Case Study: USSG

- USSG § 2B1.1: Basic Economic Offenses-theft, embezzlement, receipt of stolen property, property destruction, and offenses involving fraud or deceit
- Base offense level of 7 if the defendant was convicted of a financial related offense with a statutory maximum of 20 years' imprisonment; or,
- Base offense level of 6, otherwise

Embezzlement by Credit Union Employee

COUNT ONE

Embezzlement by Credit Union Employee

The Grand Jury charges that beginning in or around October of 2010 and continuing until on or about July 27, 2012, in the Eastern District of Tennessee, the defendant, AMY L. PHILLIPS, then being an employee of the Kingston TVA Employees Credit Union in Harriman, Tennessee, the deposits of which were insured by the National Credit Union Administration, with intent to defraud and injure the Kingston TVA Employees Credit Union, willfully embezzled, purloined, and misapplied more than \$1,000 of the moneys, funds, credits, and other things of value belonging to or otherwise pledged or entrusted to the care of the Kingston TVA Employees Credit Union, in violation of Title 18, United States Code, Section 657.

Punishment

- The maximum term of imprisonment on Count 1 is 30 years.
- Based upon a total offense level of nine and a criminal history category of I, the USSG imprisonment range is four months to 10 months. Since the applicable USSG range is in Zone B of the Sentencing Table, the minimum term may be satisfied by (1) a sentence of imprisonment; (2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in USSG §5C1.1(e), provided that at least one month is satisfied by imprisonment; or (3) a sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement, community confinement, or home detention.

Punishment/Probation

- Statute: Ineligible for probation because the instant offense is a Class B Felony.
- USSG: Ineligible for probation because the instant offense is a Class B Felony.
- Since the applicable USSG range is in Zone B of the Sentencing Table, the Court may impose probation with a condition or combination of conditions requiring intermittent confinement, community confinement, or home detention.
- The maximum fine for Count 1 is \$250,000.
- A special assessment of \$100 is mandatory

Mail Fraud Statute

- Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service,

Mail Fraud Statute

- or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be punished

Wire Fraud Statute

- Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.

Mail and Wire Fraud

- Mail fraud, 18 U.S.C. § 1341, and wire fraud, 18 U.S.C. § 1343, have similar elements, except that mail fraud involves mailing, and wire fraud requires a wire transmission that passes in interstate commerce.

Mail Fraud: Elements

- The defendant devised or intended to devise a scheme or artifice
- a) to defraud, or
- b) to obtain money or property by means of false or fraudulent pretenses, representations or promises, and
- For the purpose of executing the scheme or artifice or attempting to do so,
- The defendant
- a) placed in an authorized depository for mail matter any matter or thing to be sent or delivered by the Postal Service, or
- b) took or received from an authorized depository for mail matter any matter or thing, or
- c) knowingly caused to be delivered by mail or by any private or commercial interstate carrier any matter or thing
- i. according to the direction thereon; or
- ii. at the place at which it is directed to be delivered by the person to whom it is addressed; or
- d) deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier

Mail Fraud: Keys

- In order to meet 18 U.S.C. § 1341's jurisdictional requirement, use of the mails need not be an essential element of the scheme.
- It will suffice if the mails are merely incident to an essential part of the scheme. The use of the mails may also be merely a step in the plot.
- In addition, the defendant need not personally effect the mailing. It is sufficient that the defendant cause the mailing, or act with knowledge that the use of the mails will follow in the ordinary course of business, or where such use can reasonably be foreseen, even though not actually intended.

Mail Fraud: Keys

- It is not necessary for the defendant to gain, or for the scheme to succeed, in order to convict the defendant.
- The victim does not have to have suffered a loss, because the crime consists merely of devising the scheme and executing or attempting to execute it.

Mail Fraud: Keys

- A scheme to defraud is not defined according to "technical standards. The scheme need not be fraudulent on its face, but must involve some sort of fraudulent misrepresentations or omissions reasonably calculated to deceive persons of ordinary prudence and comprehension."

Mail Fraud: Keys

- Mail fraud is a specific intent crime. The specific intent required, however, relates only to the intent to defraud. Under the mail fraud statute, it must be shown that the defendants possessed the requisite intent to defraud. Proof is required of specific intent and the defendants must either have devised the fraudulent scheme themselves, or have willfully participated in it with knowledge of its fraudulent nature.

Mail Fraud: Keys

- The government can prove specific intent by circumstantial evidence. In the case of a lower level person in a scheme, evidence of continuing personal or professional relationships with the architects of the scheme, excessive financial gain or extravagant expense accounts, and the defendant's role in the operation (supervisor vs. "gofer"), are relevant factors.

Mail Fraud: Keys

- The Supreme Court tells us:
- It is not necessary that the scheme contemplate the use of the mails as an essential element, nor is it necessary for the government to show that the defendant mailed anything, as long as he caused it to be mailed.
- The defendant does not actually have to know that the mails were used and, *a fortiori*, *the mailing does not have to be willful* (devising the scheme is the willful act). Where one does an act with knowledge that the use of the mails will follow in the ordinary course of business, or where such use can reasonably be foreseen, even though not actually intended, then he 'causes' the mails to be used.

Mail Fraud: Keys

- Where one devises a scheme, involving the use of attorneys to make claims and file lawsuits, the use of the mails to forward claims to insurance carriers and to send pleadings to opposing counsel is reasonably foreseeable. Similarly, where one expects a payment from an insurance carrier, the mailing of a check from the insurance company is reasonably foreseeable.
- There are two ways to meet the knowledge requirement of the statute: first, by showing that the defendant had actual knowledge that the mails would be used (subjective proof); or, second, by showing that, regardless of the defendant's actual knowledge, it was reasonably foreseeable that the mails would be used (objective proof). The same standard applies with respect to wire fraud.

Mail Fraud: Keys

- Post-success mailing that is "in furtherance" is the lulling letter. Letters, which are sent after the scheme has been completed, but which "were designed to lull the victims into a false sense of security, postpone their ultimate complaint to the authorities, and therefore make the apprehension of the defendants less likely than if no mailing had taken place,"
- Letters promising to repay money to victims can be lulling letters, if done to avoid lawsuits and complaints, which could jeopardize the scheme.

Mail Fraud: Keys

- It is necessary to prove that the item that was sent was, in fact, mailed. With the number of private courier services available today, it is not sufficient to have a witness say that the item was "sent." Such a statement, without further clarification, does not meet the mailing requirement.

What about the victims?

- The victim's negligence is not a defense. Sometimes, defense attorneys try to argue that it was not reasonable for the victim to be deceived. The law is quite favorable to the government on this point.
- The victim's negligence is not a defense to criminal conduct. The truth about virtually every scheme to defraud could be obtained if the gull were clever and diligent enough. The truly careful are, perhaps, never defrauded because they are not deceived by the artifice. The laws protecting against fraud are most needed to protect the careless and the naive from predators, and they are designed for that purpose.

Mail and Wire Fraud Difference

- As a reminder, mail fraud charges do not require any interstate movement of the mail. The statute covers purely intrastate mailings, if the U.S. Postal Service or a private, interstate commercial carrier transported the mailing. In the case of mailings, either the Post Office Clause (Article I, Section 8, Clause 7) or the fact that the carrier is an instrumentality of interstate commerce provides the constitutional basis for the law.
- The wire fraud statute requires that the transmission be "in interstate or foreign commerce."

Mail fraud

- Mail fraud has its own venue paragraph, in 18 U.S.C. [3237\(a\)](#), which provides: Any offense involving the use of the mails, transportation in interstate or foreign commerce, or the importation of an object or person into the United States is a continuing offense and, except as otherwise provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such commerce, mail matter, or imported object or person moves.

Mail fraud

- Generally, that means that a fraud charge can be brought anywhere that the mail or wire communication passed on its way, as well as in the districts of sending and receiving. However, if no mailings or wirings passed through the district, the fact that fraudulent conduct occurred there is not sufficient for venue. *United States v. Wood*, 364 F.3d 704 (6th Cir. 2004).

Mail Fraud: Punishment

- 18 U.S.C. § 1341: up to 20 years' imprisonment (or up 30 years if it involves a presidentially declared major disaster or emergency)
- Fine: up to \$250,000 (or \$1,000,000 if it involves a presidentially declared major disaster or emergency)
- Up to three years of supervised release
- \$100 special assessment
- Restitution

Mail Fraud Case Study

- United States v. Kevin Scott Thibault
- Investigating Agency: FBI
- Indictment and Information

Mail Fraud Case Study: Information

From in or about March 2012, through in or about March 2013, in the Eastern District of Tennessee and elsewhere, the defendant **KEVIN SCOTT THIBAUT** devised and intended to devise a scheme to defraud others, and to obtain money by means of material false and fraudulent pretenses, representations, and promises from various victims.

Mail Fraud Case Study: Information

- In or about March 2012, defendant **KEVIN SCOTT THIBAUT** falsely and with the intent to deceive and defraud, represented to victims J.R. and H.R. that he was an attorney who could assist them with the adoption of foster children who were then in J.R. and H.R.'s custody. Thereafter, based on his false and fraudulent representations and promises, J.R. and H.R. provided defendant **KEVIN SCOTT THIBAUT** with cash payments for his alleged legal services to represent them during what they believed to be impending adoption proceedings. Through false and fraudulent representations and promises, defendant **KEVIN SCOTT THIBAUT** led J.R. and H.R. to believe that he had initiated the adoption proceedings when he had not.

Mail Fraud Case Study: Information

On or about October 25, 2012, based on defendant **KEVIN SCOTT THIBAUT**'s false and fraudulent representations and promises, J.R. and H.R. unknowingly provided defendant **KEVIN SCOTT THIBAUT** with a Power of Attorney for his continued assistance with the alleged adoption. The Power of Attorney contained provisions that allowed defendant **KEVIN SCOTT THIBAUT** to conduct certain transactions, including financial transactions, on behalf of J.R. and H.R. The provisions authorized defendant **KEVIN SCOTT THIBAUT** to conduct all banking business at any financial institution as well as to conduct insurance business. Thereafter, defendant **KEVIN SCOTT THIBAUT** used the Power of Attorney to aid him in making false and fraudulent representations to J.R. and H.R. and other victims including various financial institutions from whom he took money through the misuse of J.R. and H.R.'s names and other personal identifiable information.

Mail Fraud Case Study: Information

MANNER AND MEANS

It was part of the scheme that defendant **KEVIN SCOTT THIBAUT** conducted financial transactions, including unauthorized automatic teller machine cash withdrawals and purchases of goods and services, for the defendant's personal use and benefit using fraudulently obtained credit cards issued in the names of J.R. and H.R. by financial institutions including Fifth Third Bank, Continental Finance Cerulean, US Bank, First Premier Visa, and GE Capital, in which defendant **KEVIN SCOTT THIBAUT** falsely represented that the transactions and withdrawals of funds were being conducted on behalf of J.R. and H.R.

Mail Fraud Case Study: Information

It was further part of the scheme that on or about May 3, 2012, defendant **KEVIN SCOTT THIBAUT** did knowingly forge and concur in using the forged signature of the Honorable Thomas A. Varlan, a judge of the United States District Court for the Eastern District of Tennessee, for the purpose of authenticating a document, to wit, a Notice, Consent, and Reference of a Civil Action to a Magistrate Judge, that related to the alleged adoption referenced herein.

Mail Fraud Case Study: Information

It was further part of the scheme that, on or about May 3, 2012, defendant **KEVIN SCOTT THIBAUT** did knowingly forge and concur in using the forged signature of Kathy Keeton, an officer of the United States District Court for the Eastern District of Tennessee, for the purpose of authenticating a document, to wit, a Certification of a Judgment in a Civil Action, that related to the alleged adoption referenced herein.

Mail Fraud Case Study: Information

It was further part of the scheme that, in or about November 2012, defendant **KEVIN SCOTT THIBAUT** caused J.R. to liquidate his Prudential Retirement Services Account that then, prior to liquidation, had a cash value of \$232,858.44.

Mail Fraud Case Study: Information

EXECUTION OF THE SCHEME TO DEFRAUD

On or about November 13, 2012, in Blount County, Tennessee, in the Eastern District of Tennessee, defendant **KEVIN SCOTT THIBAUT**, for the purpose of executing and attempting to execute the scheme described above, knowingly caused to be delivered by a private or commercial interstate carrier according to the direction thereon, a negotiable instrument, to wit, a Prudential Retirement Services check in the amount of \$180,620.35, that was sent from its place of business in Millville, New Jersey, which is located outside of Tennessee. Thereafter, defendant **KEVIN SCOTT THIBAUT** used the check proceeds to further defraud J.R. and H.R. all in violation of Title 18, United States Code, Section 1341.

Mail Fraud Case Study: Indictment: Count One

The Grand Jury charges that on or about May 3, 2012, in the Eastern District of Tennessee, the defendant, KEVIN SCOTT THIBAULT, did knowingly forge and concur in using the forged signature of the Honorable Thomas A. Varlan, a judge of the United States District Court for the Eastern District of Tennessee, for the purpose of authenticating a document, to wit, a Notice, Consent, and Reference of a Civil Action to a Magistrate Judge, in violation of 18 U.S.C. § 505.

Mail Fraud Case Study: Indictment: Count Two

The Grand Jury further charges that on or about May 3, 2012, in the Eastern District of Tennessee, the defendant, KEVIN SCOTT THIBAULT, did knowingly forge and concur in using the forged signature of Kathy Keeton, an officer of the United States District Court for the Eastern District of Tennessee, for the purpose of authenticating a document, to wit, a Certification of a Judgment in a Civil Action, in violation of 18 U.S.C. § 505.

Mail Fraud Case Study: The punishment phase

- Punishment:
- Prison: 72 months
- Supervised release: 3 years
- Restitution: \$380,340.12

Bonus Case Study:

Aggravated Identity Theft

INDICTMENT COUNT ONE

The Grand Jury charges that beginning on or about August 11, 2014, and continuing in or about August 30, 2014, in the Eastern District of Tennessee and elsewhere, the defendant, GARY LYNN IRWIN, willfully and knowingly made false statements in an application for a passport with intent to induce and secure for his own use the issuance of a passport under the authority of the United States, contrary to the laws regulating the issuance of such passports and the rules prescribed pursuant to such laws, in that, in such application, the defendant, GARY LYNN IRWIN, stated that his name was L.D.I., date of birth December 27, 19xx, which statements he knew to be false, in violation of Title 18, United States Code, Section 1542.

Bonus Case Study:

Aggravated Identity Theft

The Grand Jury charges further that, on or about August 30, 2014, in the Eastern District of Tennessee, the defendant, GARY LYNN IRWIN, did knowingly use without lawful authority, a means of identification of another person during and in relation to a felony violation enumerated in Title 18, United States Code, Section 1028A(c), to wit: the defendant, GARY LYNN IRWIN, made false statements in an application for a passport, in violation of Title 18, United States Code, Section 1542, knowing that the means of identification belonged to another actual person, in violation of Title 18, United States Code, Section 1028A.

Aggravated Identity Theft Facts

- May be a dead person, but must be a real person

Facts:

On or about August 8, 2014, the defendant, who identified himself as Larry Dean Irwin, born on December 27, 1947, executed a standard passport application form at a Knox County, Tennessee Clerk's Office. He provided a birth certificate and a Tennessee identification card as proof of identity in the name Larry Dean Irwin, and a photograph of himself, Gary Lynn Irwin, the defendant.

Facts:

- During the normal course of business, the passport application clerk verified that the defendant's physical description (face), who was there in person, was one and the same as the person pictured in the photograph submitted with the application. However, a subsequent Department of State ("DOS") database check revealed that the person with the identifiers listed above (and others on the application including parents' names) died on December 29, 1947.

Facts:

- Thereafter, the DOS sent the defendant a letter seeking additional identifying information. In response, the defendant sent the DOS a reply that included his recently acquired social security number and a letter that noted, “I called in my social security number just today. [I did not have one before, because I lived on a reservation most of my life, and after that was a subsistence farmer.] I applied, received and sent my SS Number to you. In case it is not in the file, my SS number is ***-**-6306. I am also sending a copy of it, front and back with this correspondence.”

Facts:

An investigation followed that revealed that the defendant was arrested in July 2013, by the Sevierville Police Department (“SPD”) for rape of a child under 13 years of age and aggravated sexual battery, and that Larry Dean Irwin died on December 29, 1947. At the conclusion of the investigation, law enforcement arrested the defendant at his residence.

Facts:

- The defendant agrees and admits that he made a false statement in an application for a United States passport, he made that statement intending to get a United States passport for his own use, and acted knowingly and willfully. The defendant agrees and admits further that he knowingly transferred, possessed, or used, without lawful authority, means of identification of another person, and, during and in relation to a felony enumerated in 18 U.S.C. § 1028(A)(c), to wit, passport fraud.

Sentencing Position

- The United States responded to the Presentence Investigation Report (“PSR”) (Doc. 17) without objection. The PSR provides that the defendant’s USSG range is 25 to 31 months’ imprisonment. Doc. 17, at 11. In accordance with USSG § 4A1.3, based on inadequacy of criminal history category, and USSG § 5K2.0(a)(2)(B), based on circumstances of a kind not adequately taken into consideration, the United States moves the Court for an upward departure.

Sentencing Position

- Based on the PSR information and the 18 U.S.C. § 3553(a) sentencing factors, including the nature and circumstances of the offense (Doc. 14, 1-2), the defendant's history and characteristics (Doc. 17, at 4-5, 6-10), and the need to afford both specific and general deterrence, the USSG range is insufficient and the United States moves the Court for an upward variance.

Sentencing Position

- Based on these motions, the United States seeks a collective sentence of at least 120 months' imprisonment followed by three years of supervised release to run consecutive to the defendant's sentence in Sevier County Criminal Court case number 18650II ("sex offense case") (Doc. 17, at 11).

Sentencing Position

- Further, the United States seeks a no-contact order between the defendant and the sex offense case victim during any term of imprisonment or supervised release imposed by this Court. (Doc 17, at 11). The requested sentence is sufficient, but not greater than necessary to accomplish the goals of sentencing.

Punishment

- On June 1, 2015, a Presentence Investigation Report (“PSR”) was issued. (Doc. 17). The PSR provides that the defendant’s USSG range is 25 to 31 months’ imprisonment. Doc. 17, at 11. On July 14, 2015, the United States filed its Sentencing Memorandum, Motion for Upward Departure, Motion for Upward Variance, and Notice of Witness Testimony At Sentencing (“Motion for Upward Variance”), which is hereby incorporated by reference. Doc. 19. Therein, the United States asked the Court to sentence the defendant to at least ten years imprisonment.

Punishment

- Based on the PSR information and the 18 U.S.C. § 3553(a) sentencing factors, including the nature and circumstances of the offense (Doc. 14, 1-2), the defendant's history and characteristics (Doc. 17, at 4-5, 6-10), and the need to afford both specific and general deterrence, the parties agree that the Court could find, by a preponderance of the evidence, that the USSG range is insufficient.

Punishment

- Accordingly, the United States' Motion for Upward Variance should be granted, and the parties jointly request that the Court impose a sentence of 48 months' imprisonment, to run consecutive to the defendant's sentence in Sevier County Criminal Court case number 18650II (Doc. 17, at 11), and impose the appellate waiver described below.

Money Laundering

- Conducts or attempts to conduct
- A financial transaction
- Knowing that the property involved in such a financial transaction represents the proceeds of some form of unlawful activity
- Which in fact involves the proceeds of specified unlawful activity
- While acting with the intent to promote the carrying on of the specified unlawful activity

Money Laundering Forfeiture Statute

- Allows forfeiture not only of proceeds but also of any property, real or personal, involved in the money laundering offense or any property traceable to such property. The forfeiture statute also provides for forfeiture of substitute assets.... In a criminal case, you can't seek forfeiture under the money laundering statute unless you put both a money laundering count and a separate forfeiture allegation in the indictment. The forfeiture allegation in the indictment should track the wording of § 982.

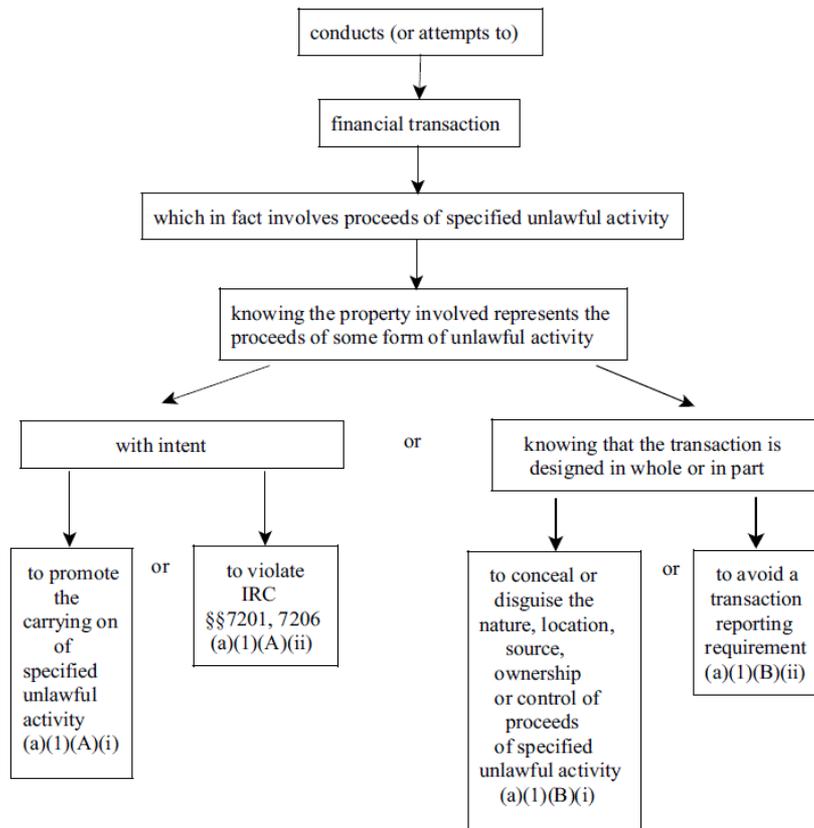
Money Laundering

- 18 U.S.C. § 1956(a)(2)(A)
- Elements:
- Transports, transmits, transfers, or attempts to do so
- Monetary instruments or funds
- From a place in the United States to or through a place outside the United States, or to a place in the United States from or through a place outside the United States
- With the intent to promote the carrying on of specified unlawful activity.

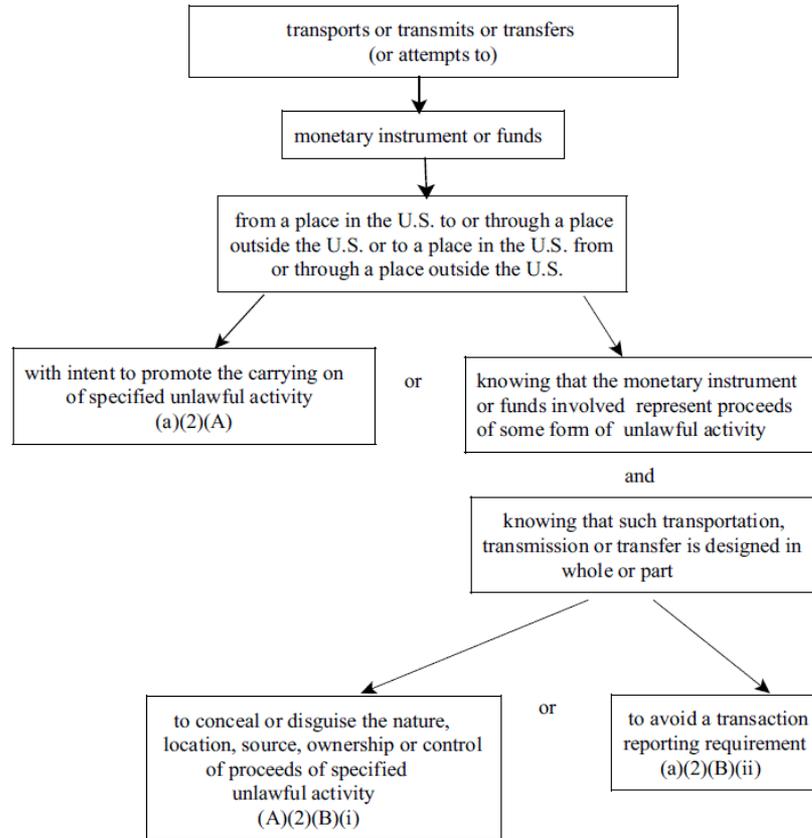
Money Laundering: Sentencing

- The criminal penalty for a violation of subsection § 1956(a)(2) is a maximum sentence of 20 years' incarceration for each offense and a maximum fine of \$500,000, or twice the value of the monetary instruments or funds involved, whichever is greater.

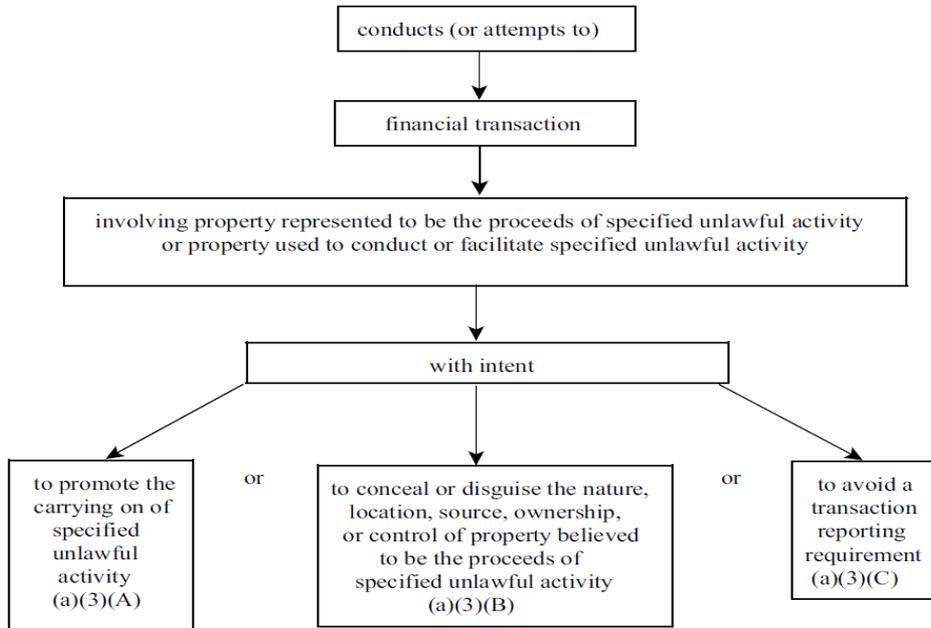
§ 1956(a)(1)



§ 1956(a)(2)



§ 1956(a)(3)



Money Laundering

18 U.S.C. § 1957

- Prohibits persons from engaging or attempting to engage in any monetary transaction exceeding \$10,000 where the defendant knows that the property is criminally derived and the property is in fact derived from specified unlawful activity. In essence, the statute prohibits the knowing receipt or disbursement of over \$10,000 in funds from a specified unlawful activity if a financial institution is used at some point

Money Laundering

18 U.S.C. § 1957

- The defendant knowingly engaged [attempted to engage] in a monetary transaction
- The monetary transaction was of a value greater than \$10,000
- The monetary transaction involved criminally derived property
- Criminally derived property was derived from specified unlawful activity
- The defendant knew that the monetary transaction involved criminally derived property
- The monetary transaction took place within the United States [the special maritime and territorial jurisdiction of the United States
 - Maybe: that the monetary transaction took place outside the United States and the special maritime and territorial jurisdiction of the United States but the defendant is a United States person.

USSG: 2B1.1

Base Offense Level:

7, if (A) the defendant was convicted of an offense referenced to this guideline; and (B) that offense of conviction has a statutory maximum term of imprisonment of 20 years or more; or

(2) 6, otherwise.

(b) Specific Offense Characteristics

(1) If the loss exceeded \$6,500, increase the offense level as follows:

Loss (Apply the Greatest) Increase in Level

(A) \$6,500 or less no increase

(B) More than \$6,500 add 2

(C) More than \$15,000 add 4

(D) More than \$40,000 add 6

(E) More than \$95,000 add 8

(F) More than \$150,000 add 10

(G) More than \$250,000 add 12

(H) More than \$550,000 add 14

USSG: 2B1.1

- (I) More than \$1,500,000 add 16
- (J) More than \$3,500,000 add 18
- (K) More than \$9,500,000 add 20
- (L) More than \$25,000,000 add 22
- (M) More than \$65,000,000 add 24
- (N) More than \$150,000,000 add 26
- (O) More than \$250,000,000 add 28
- (P) More than \$550,000,000 add 30.

USSG: 2B1.1

- (9) If the offense involved (A) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious, or political organization, or a government agency; (B) a misrepresentation or other fraudulent action during the course of a bankruptcy proceeding; (C) a violation of any prior, specific judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines; or (D) a misrepresentation to a consumer in connection with obtaining, providing, or furnishing financial assistance for an institution of higher education, increase by **2** levels. If the resulting offense level is less than level **10**, increase to level **10**.

Tips for presenting fraud cases

- Involve the prosecutor early and often
- Document
- Interview those who know
- Interview those who might know
- Obtain all possibly relevant documents
- Review (read) those documents
- Summarize the most relevant documents for the prosecutor (docs per element per count)
- Trace the money (IRS to join the team)

Conclusion

- Questions
- Contact information:
- Brooklyn Sawyers 865-545-4167