

UNITED STATES OF AMERICA, 2020 OCT 20 P 4: 25

Plaintiff.

CLERK OF COURT

SEALED

20-CR-196

v.

Case No. 20-CR-
[18 U.S.C. §§ 1344, 1957, and 2]

THOMAS E. SMITH,
STEPHEN E. SMITH,
SAMUEL A. DAVIS,
ROBERT HAMILTON, and
JONATHAN E. HENLEY,

Defendants.

INDICTMENT

THE GRAND JURY CHARGES THAT:

BACKGROUND

At all times material to this Indictment:

The Defendants and Relevant Entities

1. THOMAS E. SMITH was a resident of Pewaukee, Wisconsin, and the registered agent of T & T Holdings LLC (“T&T Holdings”), a Wisconsin limited liability company. T&T Holdings was administratively dissolved on or about March 20, 2017.

2. STEPHEN E. SMITH was a resident of Milwaukee, Wisconsin, and the registered agent of CFA Auto Transport LLC (“CFA”), a Wisconsin limited liability company, and Complete Fundamentals, Inc. (“Complete Fundamentals”), a Wisconsin non-stock corporation. S. SMITH was also the organizer of New Beginnings Family Services LLC (“New Beginnings”), a Wisconsin limited liability company.

3. SAMUEL A. DAVIS was a resident of Chicago, Illinois, and the registered agent and president of Davis Development Group Inc. (“Davis Development”), an Illinois corporation.

4. ROBERT HAMILTON was a resident of Milwaukee, Wisconsin, and the president and registered agent of Glory Transportation Services, LLC (“Glory Transportation”), a Wisconsin limited liability company.

5. JONATHAN E. HENLEY was a resident of Chicago, Illinois, and the manager and one of the registered agents of Premier Logistic Solutions LLC (“Premier Logistic”), an Illinois limited liability company.

6. Individual 1 was a resident of Milwaukee, Wisconsin, and the registered agent of Rcbels Paris, LLC (“Rebels”), a Wisconsin limited liability company.

7. Individual 2 was a resident of Milwaukee, Wisconsin, and the registered agent of Comfort Care Transit LLC (“Comfort Care”), a Wisconsin limited liability company.

8. Individual 3 was a resident of Milwaukee, Wisconsin. On or about May 21, 2020, Individual 3 filed paperwork with the State of Wisconsin establishing himself as the registered agent of New Beginnings.

The Small Business Administration

9. The United States Small Business Administration (“SBA”) was an executive branch agency of the United States government that provided support to entrepreneurs and small businesses. The mission of the SBA was to maintain and strengthen the nation’s economy by enabling the establishment and viability of small businesses and by assisting in the economic recovery of communities after disasters.

10. As part of this effort, the SBA enabled and provided for loans through banks, credit unions, and other lenders. These loans had government-backed guarantees.

The Paycheck Protection Program

11. The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act was a federal law enacted in or around March 2020 and designed to provide emergency financial assistance to the millions of Americans who are suffering the economic effects caused by the COVID-19 pandemic.

12. One source of relief that the CARES Act provided was the authorization of up to \$349 billion in forgivable loans to small businesses for payroll, mortgage interest, rent/lease, and utilities, through a program referred to as the Paycheck Protection Program (“PPP”). In April 2020, Congress authorized up to \$310 billion in additional PPP funding.

13. The PPP allowed qualifying small businesses and other organizations to receive PPP loans. Businesses were required to use PPP loan proceeds on payroll costs, interest on mortgages, rent, and utilities. The PPP allowed the interest and principal on the PPP loan to be entirely forgiven if the business spent the loan proceeds on these expense items within a designated period of time and used a certain percentage of the PPP loan proceeds on payroll expenses.

14. The amount of a PPP loan that a small business was entitled to receive was determined by the number of employees employed by the business and the business’s average monthly payroll costs.

15. In order to obtain a PPP loan, a qualifying business was required to submit a PPP loan application, which was signed by an authorized representative of the business. The PPP loan application required the business (through its authorized representative) to acknowledge the program rules and make certain affirmative certifications in order to be eligible to obtain the PPP loan. In the PPP loan application, the small business (through its authorized representative) had to state, among other things, its: (a) average monthly payroll expenses; and (b) number of employees. These figures were used to calculate the amount of money the small business was

eligible to receive under the PPP. In addition, businesses applying for a PPP loan had to provide documentation showing their payroll expenses.

16. The SBA oversaw the PPP. However, individual PPP loans were issued by private, approved lenders who received and processed PPP applications and supporting documentation, and then made loans using the lenders' own funds, which were 100% guaranteed by the SBA. Data from the application, including information about the borrower, the total amount of the loan, and the listed number of employees, was transmitted by the lender to the SBA in the course of processing the loan.

Relevant Financial Institutions

17. Financial Institution 1 was a federally insured financial institution and member of the Federal Home Loan Bank System headquartered in Green Bay, Wisconsin. Financial Institution 1 was an approved SBA lender and participated as a PPP lender to small businesses.

18. Financial Institution 2 was a Federal Deposit Insurance Corporation-insured bank headquartered in Minneapolis, Minnesota.

19. Credit Union 1 was a nationally insured credit union headquartered in Racine, Wisconsin.

COUNTS ONE THROUGH SIX
Bank Fraud – 18 U.S.C. § 1344 and § 2

20. The Grand Jury re-alleges and incorporates by reference the factual allegations contained in paragraphs 1 through 19 of this Indictment as if fully set forth herein.

The Scheme to Defraud

21. From in or about April 2020 through in or about July 2020, in the State and Eastern District of Wisconsin and elsewhere,

THOMAS E. SMITH,
STEPHEN E. SMITH,
SAMUEL A. DAVIS,
ROBERT HAMILTON, and
JONATHAN E. HENLEY,

and others known and unknown to the Grand Jury, and aided and abetted by each other, did knowingly execute and attempt to execute a scheme and artifice to defraud Financial Institution 1, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, and by omission of material facts, certain moneys, funds, credits, assets, securities, and other property owned by and under the custody and control of Financial Institution 1.

The Purpose of the Scheme and Artifice

22. It was the purpose of the scheme for defendants T. SMITH, S. SMITH, DAVIS, HAMILTON, and HENLEY, and others known and unknown to the Grand Jury, to unlawfully enrich themselves by: (a) submitting false and fraudulent PPP loan applications to financial institutions falsely representing that the applicant entities were functional and operational businesses and falsely promising to use the fund proceeds on covered business expenses, and (b) concealing and causing the concealment of these false and fraudulent applications.

Manner and Means of the Scheme

23. It was part of the scheme that defendants T. SMITH, S. SMITH, DAVIS, HAMILTON, HENLEY, Individual 1, Individual 2, Individual 3, and others, submitted and caused to be submitted fraudulent PPP loan applications to Financial Institution 1 for the purpose of obtaining funds from Financial Institution 1.

24. It was further part of the scheme that each of the PPP loan applications falsely claimed that the PPP loan applicant company was in operation as of February 15, 2020, when in fact it was not, and that it employed individuals for whom it paid salaries and payroll taxes, or paid independent contractors (as reported on IRS Form 1099-MISC). In fact, CFA, Davis

Development, New Beginnings, Comfort Care, and Premier Logistic were not in operation in February 2020. Specifically:

a. CFA's loan application falsely claimed that it was operational as of February 15, 2020, when in fact it was not and went into "delinquent" status with the Wisconsin Department of Financial Institutions ("WDFI") on or about July 1, 2019. CFA's application did not report that S. SMITH restored the active status of CFA with WDFI on or about May 5, 2020.

b. Davis Development's loan application falsely claimed that it was operational as of February 15, 2020, when in fact Davis Development had been administratively dissolved with the Illinois Secretary of State ("ILSOS") as of on or about August 10, 2018. Davis Development's application did not report that DAVIS reinstated the company on or about May 2, 2020.

c. New Beginnings' loan application falsely claimed that it was operational as of February 15, 2020, when in fact New Beginnings had been administratively dissolved with WDFI as of on or about April 13, 2020. New Beginnings' application did not report that S. SMITH reinstated the company on or about May 1, 2020.

d. Comfort Care's loan application falsely claimed that it was operational as of February 15, 2020, when in fact Comfort Care was administratively dissolved with WDFI on June 13, 2017. Comfort Care's application did not report that Individual 2 restored the active status of Comfort Care with WDFI on or about May 12, 2020.

e. Premier Logistic's loan application falsely claimed that it was operational as of February 15, 2020, when in fact Premier Logistic had been administratively dissolved with the ILSOS as of on or about June 14, 2019. Premier Logistic's application did not report that HENLEY reinstated the company on or about May 14, 2020.

25. It was further part of the scheme that each of the PPP loan applications falsely certified that the PPP loan applicant company employed individuals for whom it paid salaries and

payroll taxes, or paid independent contractors (as reported on IRS Form 1099-MISC) and falsely represented the number of employees each company employed. Each of the PPP loan applications also included falsified Employer's Quarterly Federal Tax Returns (IRS Forms 941) for each quarter of 2019 and the first quarter of 2020. In fact, none of the businesses had filed Forms 941 in any quarter of 2019 or the first quarter of 2020, meaning that the company had no employees for which federal taxes were paid during that period. Specifically:

a. CFA's loan application falsely claimed that its average monthly payroll was \$97,000 and that it employed 38 people.

b. Comfort Care's loan application falsely claimed that its average monthly payroll was \$92,000 and that it employed 23 people.

c. Davis Development's loan application falsely claimed that its average monthly payroll was \$71,000 and that it employed 20 people.

d. New Beginnings' loan application falsely claimed that its average monthly payroll was \$92,000 and that it employed 28 people.

e. Premier Logistic's loan application falsely claimed that its average monthly payroll was \$85,000 and that it employed 23 people.

f. Rebels' loan application falsely claimed that Rebels' average monthly payroll was \$62,000 and that it employed 17 people.

g. Glory Transportation's loan application falsely claimed that Glory Transportation's average monthly payroll was \$62,000 and that it employed 14 people.

26. It was further part of the scheme that defendants T. SMITH, S. SMITH, DAVIS, HAMILTON, HENLEY, Individual 1, Individual 2, Individual 3, and others falsely represented the intended use of the funds, claiming that the funds would be used for legitimate business expenses. Specifically, CFA, Comfort Care, Davis Development, New Beginnings, Premier

Logistic, and Rebels' loan applications each falsely claimed that it intended to spend loan proceeds on payroll, lease or mortgage expenses, interest, and utilities. In fact, the loan funds were used for, among other things, personal expenses and other non-business expenses.

27. It was further part of the scheme that defendants T. SMITH, S. SMITH, DAVIS, HENLEY, Individual 1, Individual 2, Individual 3, and others opened or directed others to open bank accounts at Financial Institution 1 to facilitate and expedite obtaining PPP loan funds, including:

a. On or about May 5, 2020, S. SMITH opened bank account No. x8659 at Financial Institution 1 in the name of CFA.

b. On or about May 5, 2020, DAVIS opened bank account No. x8733 at Financial Institution 1 in the name of Davis Development.

c. On or about May 8, 2020, Individual 1 opened bank account No. x9383 at Financial Institution 1 in the name of Rebels.

d. On or about May 13, 2020, Individual 2 opened bank account No. x2840 at Financial Institution 1 in the name of Comfort Care.

e. On or about May 19, 2020, HENLEY opened bank account No. x7764 at Financial Institution 1 in the name of Premier Logistic.

f. On or about May 22, 2020, Individual 3 opened bank account No. x6862 at Financial Institution 1 in the name of New Beginnings.

28. It was further part of the scheme that after the PPP loans were deposited into the applicant company's bank account at Financial Institution 1, defendants T. SMITH, S. SMITH, DAVIS, HAMILTON, Individual 1, Individual 2, and Individual 3 transferred or directed the transfer of the loan proceeds to each other, and to entities controlled by one of the defendants, enabling them to enrich themselves from the loan proceeds.

29. It was further part of the scheme that when defendants T. SMITH, S. SMITH, DAVIS, HAMILTON, HENLEY, Individual 1, Individual 2, and Individual 3 learned that Financial Institution 1 froze or inquired about their loan applications, that Defendants, Individual 1, Individual 2, and Individual 3 took steps to misrepresent, conceal, hide and cause to be misrepresented, concealed, and hidden, the existence, purpose, and acts done in furtherance of the scheme.

30. It was further part of the scheme that in total, at least approximately \$960,000 was provided to Defendants, Individual 1, Individual 2, and Individual 3 in fraudulently obtained loan proceeds, and an additional \$442,500 was attempted to be fraudulently obtained by Defendants, Individual 1, Individual 2, and Individual 3.

Executions

31. On or about the following dates, in the State and Eastern District of Wisconsin and elsewhere, Defendants T. SMITH, S. SMITH, DAVIS, HAMILTON, and HENLEY, aided and abetted by each other and by others known and unknown to the Grand Jury, did knowingly execute and attempt to execute the above-described scheme to defraud by committing and willfully causing others to commit the following acts, each of which constituted an execution of the fraudulent scheme:

| Count | Defendant(s) | Approximate Date | Act | Approximate Amount Sought in Loan |
|-------|----------------------|-------------------|---|-----------------------------------|
| 1 | T. SMITH DAVIS | April 26, 2020 | Submission of fraudulent PPP loan application for Davis Development to Financial Institution 1 | \$177,500 |
| 2 | T. SMITH S.SMITH | May 1, 2020 | Submission of fraudulent PPP loan application for CFA to Financial Institution 1 | \$242,500 |
| 3 | T. SMITH HAMILTON | May 1, 2020 | Submission of fraudulent PPP loan application for Glory Transportation to Financial Institution 1 | \$155,000 |

| Count | Defendant(s) | Approximate Date | Act | Approximate Amount Sought in Loan |
|--------------|----------------------|-------------------------|---|--|
| 4 | T. SMITH S. SMITH | May 8, 2020 | Submission of fraudulent PPP loan application for Rebels to Financial Institution 1 | \$155,000 |
| 5 | T. SMITH | May 15, 2020 | Submission of fraudulent PPP loan application for Comfort Care to Financial Institution 1 | \$230,000 |
| 6 | T. SMITH HENLEY | May 20, 2020 | Submission of fraudulent PPP loan application for Premier Logistic to Financial Institution 1 | \$212,500 |

Each in violation of Title 18, United States Code, Sections 1344(2) and 2.

COUNTS SEVEN THROUGH FOURTEEN

Money Laundering – 18 U.S.C. § 1957

32. The Grand Jury re-alleges and incorporates by reference the factual allegations contained in paragraphs 1 through 31 of this Indictment as if fully set forth herein.

33. On the dates specified below, in the State and Eastern District of Wisconsin and elsewhere, Defendants T. SMITH, S. SMITH, DAVIS, and HAMILTON, aided and abetted by each other and by others known and unknown to the Grand Jury, knowingly engaged in, attempted to engage in, and caused others to engage in a monetary transaction by, through, and to a financial institution, affecting interstate and foreign commerce, knowing that such transaction involved criminally derived property of a value greater than \$10,000, such property having been derived from a specified unlawful activity, that is, bank fraud, in violation of Title 18, United States Code, Section 1344:

| Count | Defendant(s) | Approximate Date | Description of Transaction |
|--------------|---------------------|-------------------------|---|
| 7 | HAMILTON | May 6, 2020 | Cashier's check for approximately \$30,000 withdrawn from Glory Transportation's Financial Institution 1 account No. x2240, written to T. SMITH. |
| 8 | HAMILTON | May 8, 2020 | Cashier's check for approximately \$50,000 withdrawn from Glory Transportation's Financial Institution 1 account No. x2240, deposited into Credit Union 1 account No. x2707, held in the name of HAMILTON. |
| 9 | T. SMITH | May 18, 2020 | Cashier's check for approximately \$20,000 withdrawn from Rebels' Financial Institution 1 account No. x9383, deposited into Financial Institution 1 account ending in 1719, held in the name of T&T Holdings. |
| 10 | S. SMITH | May 18, 2020 | Cashier's check for approximately \$20,000 withdrawn from Rebels' account No. x9383, deposited into Financial Institution 2 account No. x4088, held in the name of S. SMITH d/b/a Complete Fundamentals. |

| Count | Defendant(s) | Approximate Date | Description of Transaction |
|--------------|----------------------|-------------------------|--|
| 11 | T. SMITH | May 20, 2020 | Cashier's check for approximately \$40,000 withdrawn from Comfort Care's Financial Institution 1 account No. x2840, deposited into Financial Institution 1 account No. x4241, held in the name of T. SMITH. |
| 12 | T. SMITH DAVIS | May 21, 2020 | Cashier's check for approximately \$75,000 withdrawn from Davis Development's Financial Institution 1 account No. x8733, deposited into Financial Institution 1 account No. x1719, held in the name of T&T Holdings. |
| 13 | T. SMITH S. SMITH | May 22, 2020 | Cashier's check for approximately \$25,000 withdrawn from CFA's Financial Institution 1 account No. x8659, deposited into Financial Institution 1 account No. x1719, held in the name of T&T Holdings. |
| 14 | S. SMITH | May 22, 2020 | Cashier's check for approximately \$25,000 withdrawn from CFA's Financial Institution 1 account No. x8659, deposited into Financial Institution 2 account No. x4088, held in the name of S. SMITH d/b/a Complete Fundamentals. |

Each in violation of Title 18, United States Code, Section 1957 and Section 2.

FORFEITURE ALLEGATIONS

The allegations contained in Counts 1-14 of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeiture. Upon conviction of an offense alleged in Counts 1-14, Defendants shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), by way of Title 28, United States Code, Section 2461(c), any property that constitutes or is traceable to proceeds of the offense. This property includes, but is not limited to, a sum of money reflecting the proceeds Defendants obtained from the offense.

The allegations contained in Counts 1-14 of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeiture. Upon conviction of an offense alleged in Counts 1-14, Defendants shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(1), any property involved in the offense, or any property traceable to such property. This property includes, but is not limited to, a sum of money reflecting the proceeds Defendants obtained from the offense.

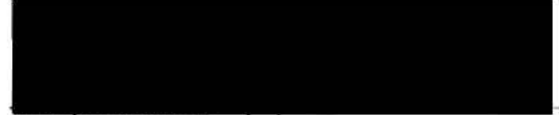
If any of the above-described forfeitable property, as a result of any act or omission of the Defendants,

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), and Title 28, United States Code, Section 2461(c), to seek the forfeiture of any other property of the

Defendants, up to the value of the above-described forfeitable property.

A TRUE BILL:




FOREPERSON /

Dated: 10-20-2020



MATTHEW D. KRUEGER
United States Attorney



DANIEL KAHN
Acting Chief, U.S. Department of Justice, Fraud Section