UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

UNITED STATES OF AMERICA	)	DOCKET NO. 1:18cr78
	)	
	)	
v.	)	Violations:
	)	
	)	18 U.S.C. § 2
	)	18 U.S.C. § 1343
	)	18 U.S.C. § 1349
(1) MARION KENT COVINGTON	)	
(2) DIANE MARY MCKINNY	)	
	)	

BILL OF INDICTMENT

THE GRAND JURY CHARGES:

Introduction

1. From in or around November 2008 to in or around March 2013, in Rutherford County, North Carolina, and elsewhere, the defendants, MARION KENT COVINGTON and DIANE MARY MCKINNY, along with others known and unknown to the Grand Jury, conspired to defraud the State of North Carolina, and the United States of America, in violation of Title 18, United States Code, Sections 1343 and 1349.

2. In November or December of 2008, COVINGTON and MCKINNY developed and implemented a scheme to defraud the State of North Carolina by placing employees of Diverse Corporate Technologies, Inc. ("DCT"), a plastics manufacturing company owned by COVINGTON, on Unemployment Insurance Benefits ("UI Benefits") while those employees continued to work at the business to a degree that was in excess of what was permitted by the laws governing the North Carolina UI Benefits program. The scheme allowed DCT to reduce the cost-of-labor component of its cost-of-goods-sold, thereby increasing its net profitability.

3. Beginning around the time of its initial implementation, and continuing until in or around March 2013, COVINGTON and MCKINNY, aided and abetted by others known and unknown to the Grand Jury, promoted the scheme to other business owners and managers in their community. At least five businesses implemented the scheme as designed by COVINGTON and MCKINNY, resulting in substantial monetary losses to the State of North Carolina and the United States of America.

The Scheme

A. The North Carolina UI Benefits Program

4. At all relevant times, the North Carolina Employment Security Law provided temporary unemployment benefits, as required by federal law, to any individual within the State of North Carolina who was unemployed through no fault of his or her own, who was monetarily eligible, and who was able, available, and actively seeking work.

5. According to the laws in place at the time of the offense, an individual could apply for and obtain UI Benefits from the State of North Carolina in one of two ways:

a. First, in cases where an individual was totally separated from his or her previous employer through no fault of his or her own—as would be the case where the individual was terminated as part of a reduction-in-force and received a separation notice, with no immediate prospect of returning to work for the same employer—that individual could file his or her own claim for UI Benefits with the North Carolina Employment Security Commission ("NCESC"). N.C.G.S. § 96-15(a) (2009). The NCESC refers to such a claim as a claim without payroll attachment.

b. Second, in cases where an individual was partially separated from his or her previous employer through no fault of his or her own—as would be the case where economic conditions forced the employer to reduce the individual's hours, but the employer did not want to lose the individual to the job market and intended to return the employee to full-time status in the near future—that employer could file a claim with the NCESC on the employee's behalf. N.C.G.S. § 96-15(a) (2009). The NCESC refers to such a claim as a claim with payroll attachment.

6. In either scenario, upon receipt of the initial claim, the NCESC would evaluate the reason for the separation, the claimant's monetary eligibility (which was determined by looking at the claimant's recorded earnings during previous quarters), and the claimant's availability for work. If the NCESC were satisfied that the claimant was eligible for benefits, then it would calculate a weekly benefit amount based on the claimant's historical earnings, which would be roughly equivalent to two-thirds of the claimant's average weekly earnings during the base period. N.C.G.S. § 96-12 (2009).

7. The claimant would then receive that weekly benefit amount, subject to certain adjustments, for every week in which the claimant or the claimant's employer certified the claimant's continuing eligibility pursuant to the initial eligibility criteria.

8. Each benefit week, the claimant (in the case of a claim without payroll attachment) or the claimant's employer (in the case of a claim with payroll attachment) would be obligated to reaffirm the claimant's continuing eligibility for benefits according to the criteria initially considered by the NCESC. These certifications could be performed over the telephone or over the internet.

9. Regardless of whether the initial claim was made with or without payroll attachment, the claimant (or the employer certifying on the claimant's behalf) would also be required to report to

the NCESC any wages payable—not just paid, but payable—to the claimant as a result of any work done by the claimant during the applicable benefit week. Past a certain threshold, those earnings could be used to reduce the weekly benefit amount payable to the claimant. N.C.G.S. § 96-12(c) (2009).

10. Moreover, the claimant's wages-payable would be used by the NCESC to determine whether the claimant should be considered "totally unemployed," "partially unemployed," or "part-totally unemployed." For benefit weeks within an established benefit year, the NCESC would deem a claimant "totally unemployed," irrespective of payroll attachment, if the claimant's earnings for such week did not exceed the threshold for reducing the weekly benefit amount. The NCESC would deem a claimant "partially unemployed" if the claimant had payroll attachment but, because of lack of work during the payroll week for which the claimant requested benefits, the claimant worked less than the equivalent of three full-time days for the employer, and whose earnings for the week were sufficient to reduce the weekly benefit amount. Finally, the NCESC would deem a claimant "part-totally unemployed" if the claimant had no payroll attachment, but earnings from odd jobs or subsidiary work were sufficient to reduce the weekly benefit amount. N.C.G.S. § 96-8 (2009).

11. In summary, while there were technical differences between the forms of unemployment outlined above, there were certain similarities, too. In particular:

a. At all relevant times, North Carolina law established that no person, regardless of payroll attachment status, who worked full-time or near-full-time, meaning more than the equivalent of three full-time days per week, could be eligible for UI Benefits of any kind;

b. At all relevant times, North Carolina law established that a claimant (in the case of a claim without payroll attachment) or the claimant's employer (in the case of a claim with payroll attachment) was legally required to report all wages payable to the claimant—not just wages paid—for every week for which the claimant sought benefits; and,

c. At all relevant times, North Carolina law established that a claimant (in the case of a claim without payroll attachment) or the claimant's employer (in the case of a claim with payroll attachment) was legally required to certify the claimant's continuing availability for work on a weekly basis, meaning, in cases of partial or part-total unemployment, that the claimant was available to work additional hours and, in cases of total unemployment, that the claimant was actively seeking other employment opportunities.

B. COVINGTON and MCKINNY Devise the Scheme

12. At all times relevant to this case, COVINGTON was the president, owner, and registered agent of DCT, a for-profit plastics manufacturing business located in Rutherford County, North Carolina. MCKINNY worked for COVINGTON at DCT.

13. In late 2008, DCT was struggling financially. COVINGTON and MCKINNY, along with others known and unknown to the Grand Jury, determined that DCT could increase its profitability through the fraudulent manipulation of the North Carolina UI Benefits Program.

14. To implement the fraud, in November or December of 2008, COVINGTON and MCKINNY "laid off" nearly all of the employees at DCT:

a. First, MCKINNY provided some of DCT's employees with separation notices and instructed them as to how to file their own claims for UI Benefits. Those employees proceeded to file claims for UI Benefits without payroll attachment and received UI Benefits based on their asserted "totally unemployed" status.

b. Next, COVINGTON called a business meeting at DCT and informed the remaining DCT employees that the company could no longer afford to pay their wages, and that they therefore would be placed on UI Benefits, but that COVINGTON expected the employees to continue to work at DCT full-time in order to help the business survive. COVINGTON used his position of authority within his church community, which included most, if not all, of the employees at DCT, to coerce the employees to comply.

c. Around the same time, and on or about December 18, 2008, MCKINNY used the internet to file claims for UI Benefits on behalf of the employees whom COVINGTON had instructed to continue working at DCT while they received UI Benefits. MCKINNY filed the claims with payroll attachment, which made her responsible for certifying the claimants' initial eligibility, as well as certifying the claimants' continuing eligibility on a weekly basis.

15. At COVINGTON's direction, at least five of the employees for whom MCKINNY made attached claims for UI Benefits then continued to work at DCT on a full-time or near-full-time basis while collecting UI Benefits every week. The attached employees regularly worked hours in excess of what was permissible for purposes of the UI Benefits program.

16. MCKINNY certified the attached employees' eligibility for UI Benefits on a weekly basis despite knowing that the attached employees were working in excess of what was permitted by the North Carolina UI Benefits program and therefore were ineligible for the UI Benefits she claimed on behalf of those employees.

17. Through the operation of the scheme outline above, COVINGTON and MCKINNY obtained more than six months of free labor for DCT, paid for by the government, instead of by the business itself.

C. COVINGTON and MCKINNY Promote the Scheme to Other Conspirators

18. By September of 2009, several other businesses run by members of the same church community to which COVINGTON and MCKINNY belonged, and employing many members of that church community, were facing financial struggles related to the economic downturn.

COVINGTON and MCKINNY promoted the fraud that COVINGTON and MCKINNY had devised at DCT to other members of the church community. For example:

a. In or about September 2009, Jason Gross, a member of the church community and the manager of the for-profit Foot & Ankle Center of the Carolinas, P.A. ("Foot & Ankle Center") learned about DCT's experience with the UI Benefits program from MCKINNY. Beginning shortly thereafter, Jason Gross started to "lay off" all of the Foot & Ankle Center employees, at least four of whom continued to work at Foot & Ankle center after their "lay-offs" in excess of what was permitted by the North Carolina UI Benefits Program. Jason Gross regularly certified those employees' eligibility for UI Benefits to the NCESC, despite knowing that those employees frequently were ineligible.

b. At around the same time, J.F., a church member and the owner of a for-profit contracting business, spoke with COVINGTON about what COVINGTON and MCKINNY had implemented at DCT, and then with Jason Gross, who had learned about the scheme from MCKINNY. Jason Gross taught the scheme to J.F. J.F. then proceeded to "lay off" several of his employees, who continued to work in excess of what was permitted by the North Carolina UI Benefits program.

c. After the scheme was successful at DCT, COVINGTON implemented a variation of the scheme a second time, with MCKINNY's help, at Integrity Marble, Inc., d/b/a Integrity Marble & Granite, another for-profit company that COVINGTON owned and managed, in or about March of 2010.

d. COVINGTON then implemented a variation of the scheme a third time at Sky Catcher Communications, Inc., a company he managed, in or about May of 2011.

19. In total, between approximately November 2008 and March 2013, the scheme resulted in over $250,000 in fraudulent claims for UI Benefits by employees who continued to work full-time or near-full-time at businesses owned or managed by co-conspirators, and who were therefore ineligible to claim those UI Benefits.

D. The Scheme Affects a Financial Institution

20. Many of the DCT employees placed on UI Benefits by COVINGTON and MCKINNY received their weekly benefit payments by way of direct deposit to their bank accounts. The same was true with respect to many of the employees placed on UI Benefits by the other business that implemented the scheme after its promotion by COVINGTON, MCKINNY, and others known and unknown to the Grand Jury.

21. Nearly every direct deposit of UI Benefits in this case required the use of numerous interstate wires and affected a financial institution, as that term is defined by Title 18, United States Code, Section 20.

22. First, every time a claimant who had elected to receive benefits by direct deposit certified his or her weekly eligibility (or had his or her eligibility certified by his or her employer), the NCESC, located within the State of North Carolina, would originate a request for that disbursement, and would transmit that request to the Bank of America Automated Clearing House ("ACH") processing location in the State of Virginia. At all relevant times, Bank of America was the administrator for the NCESC's direct-deposit program.

23. With respect to any disbursement to a Bank of America customer's account, Bank of America would then process the ACH transaction directly. With respect to any disbursement to an account at another bank, Bank of America would convey the ACH request to a Federal Reserve Bank for processing to the claimant's financial institution. There are twelve Federal Reserve Banks, and none of them are located within the State of North Carolina.

24. All of the foregoing communications were performed electronically, through the use of interstate wire transfers.

25. Moreover, because of the high rates of unemployment experienced in the State of North Carolina during the pendency of this conspiracy, many of the employees' UI Benefit payments were funded at least in part by the Federal UI Trust Fund. The United States Treasury nominally held the Federal UI Trust Fund, but the United States Treasury's bank account was held by the Federal Reserve. Thus, in this case, many of the wire payments to the claimants were both processed by and, at least in part, funded by, the Federal Reserve.

26. Every Federal Reserve Bank is a financial institution, as the term is defined by Title 18, United States Code, Section 20. Similarly, Bank of America is a financial institution, as the term is defined by Title 18, United States Code, Section 20.

27. The scheme set forth herein therefore involved the use of one or more interstate wires and affected one or more financial institutions.

COUNT ONE

(Conspiracy to Commit Wire Fraud)
(18 U.S.C. § 1349)

28. The Grand Jury re-alleges and incorporates by reference all of the allegations contained in Paragraphs 1 through 27 of this Bill of Indictment, and further alleges that:

29. From in or about November 2008 to in or around March 2013, in Rutherford County, within the Western District of North Carolina, and elsewhere, the defendants,

(1) MARION KENT COVINGTON, and
(2) DIANE MARY MCKINNY

knowingly combined, conspired, confederated and agreed with one another, and with others known and unknown to the Grand Jury, to commit the criminal offense of wire fraud, in violation of Title 18, United States Code, Sections 1343 and 1349.

It is further alleged that such conspiracy, and such wire fraud, affected at least one financial institution, as the term is defined by Title 18, United States Code, Section 20, that is, a Federal Reserve Bank within the Federal Reserve Banking System, and Bank of America, a depository institution then insured by the Federal Deposit Insurance Corporation.

Manner and Means of the Conspiracy

30. As set forth above, it was a part of the scheme that COVINGTON and MCKINNY laid off the majority of DCT's employees on dates in or about November or December of 2008, and that MCKINNY filed attached claims for UI Benefits on behalf of several of those employees. At least five of the attached employees then continued to work in excess of the time permitted under the program while collecting UI Benefits, for a period of several months.

31. It was a part of the scheme that MCKINNY would file weekly certifications, using the internet, with the NCESC, confirming that each of the attached employees referenced above was compliant with the eligibility requirements for a UI Benefits claim, even though MCKINNY knew that the employees regularly were not so compliant.

32. It was also part of the scheme that COVINGTON, MCKINNY, and others known and unknown to the Grand Jury promoted the scheme to other business owners and managers within their church community, and that those business owners and managers then implemented the scheme at their own businesses, such that the total fraudulent claims for UI benefits exceeded $250,000.

Object of the Conspiracy

33. As set forth above, it was an object of the conspiracy that COVINGTON, MCKINNY, and others known and unknown to the Grand Jury would execute the scheme set forth in paragraphs 1 through 27 in order to defraud the State of North Carolina and the United States into paying UI Benefits to employees who were not eligible to receive them, for the benefit of those employees and the businesses that employed them.

All in violation of Title 18, United States Code, Sections 1349, 1343, and 2.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

NOTICE OF FORFEITURE

Notice is hereby given of 18 U.S.C. § 982 and 28 U.S.C. § 2461(c). Under Section 2461(c), criminal forfeiture is applicable to any offenses for which forfeiture is authorized by any other statute, including but not limited to 18 U.S.C. § 981 and all specified unlawful activities listed or referenced in 18 U.S.C. § 1956(c)(7), which are incorporated as to proceeds by Section 981(a)(1)(C). The following property is subject to forfeiture in accordance with Section 982 and/or 2461(c):

a. All property which constitutes or is derived from proceeds of the violations set forth in this bill of information; and

b. If, as set forth in 21 U.S.C. § 853(p), any property described in (a) cannot be located upon the exercise of due diligence, has been transferred or sold to, or deposited with, a third party, has been placed beyond the jurisdiction of the court, has been substantially diminished in value, or has been commingled with other property which cannot be divided without difficulty, all other property of the defendant/s to the extent of the value of the property described in (a).

The following property is subject to forfeiture on one or more of the grounds stated above:

a. A forfeiture money judgment in the amount of at least $309,660, such amount constituting the proceeds of the violations set forth in this Bill of Information.

A TRUE BILL:

GRAND JURY FOREPERSON

R. ANDREW MURRAY
UNITED STATES ATTORNEY

DANIEL V. BRADLEY
ASSISTANT UNITED STATES ATTORNEY