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UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL A. BARFIELD,

Defendant.

Cr. No. 99-114-CR-T-25C

STATEMENT OF FACTS

The Defendant, MICHAEL A. BARFIELD, and the United States both agree that, had this case proceeded to trial, the United States would have introduced admissible evidence proving beyond a reasonable doubt the following essential facts:

1. From in or about the spring of 1996 through at least the spring of 1998, a federal criminal case known as United States v. Carl A. Bailey, II, Case No. S96-30-CR-FTM-24 (hereinafter the "Cape Coral case"), was pending in the Middle District of Florida. The defendants in the Cape Coral case were charged with serious violations of the federal criminal law and were awaiting trial on those charges.

2. From in or about January 1997 through February 1997, United States Senior District Judge Lee P. Gagliardi was the judge assigned to preside over the Cape Coral case; the lead prosecutor in the case was Assistant United States Attorney (AUSA) Kathleen Haley.

3. The Defendant, MICHAEL A. BARFIELD, was a paralegal hired by one of the defendants in the Cape Coral case to assist him in preparing his defense to the criminal charges.

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4. In or about April 1997, a grand jury investigation commenced in the Middle District of Florida to determine whether false allegations had been made against Judge Gagliardi and AUSA Haley (hereinafter the "Grand Jury Investigation").

5. Shortly before the trial in the Cape Coral case was scheduled to begin, two private investigators, Deana M. Scapaccino and a second investigator known to the United States (hereinafter "the second investigator"), were hired to assist Defendant BARFIELD in making a false accusation against Judge Gagliardi and AUSA Haley.

Unlawful Conspiracy and Obstruction of Justice

6. From in or about the beginning of February 1997, and continuing through in or about March 1998, in the Middle District of Florida and elsewhere, Defendant MICHAEL A. BARFIELD entered into a conspiracy and agreed with his co-conspirators to:

(a) corruptly influence, obstruct, and impede the due administration of justice in the Cape Coral case;

(b) make material false statements under oath;

(c) corruptly influence, obstruct, and impede the due administration of justice in the Grand Jury Investigation; and

(d) knowingly and willfully make materially false, fictitious, and fraudulent statements and make and use false documents, knowing the same to contain materially false, fictitious and fraudulent statements in a matter within the jurisdiction of the Federal Bureau of Investigation.

7. The purpose of this scheme was for Defendant BARFIELD

and his co-conspirators to seek to disqualify Judge Gagliardi from presiding over the trial in the Cape Coral case by leveling a false and baseless accusation of misconduct against him. Moreover, Defendant BARFIELD and his co-conspirators sought to conceal the falsity of their accusation, the purpose of the conspiracy, and the acts they committed to further it.

8.A From in or about February 1997 through in or about March 1998, Defendant MICHAEL A. BARFIELD and his co-conspirators took the following actions, among others, in the Middle District of Florida and elsewhere:

a. On or about February 13, 1997, Defendant BARFIELD and others drafted and caused to be submitted in federal court a sworn affidavit on behalf of a defendant in the Cape Coral case. That sworn affidavit falsely alleged that Judge Lee P. Gagliardi and AUSA Kathleen Haley had been observed meeting privately at a restaurant on February 8, 1997, discussing certain details of the Cape Coral case and exchanging documents relating to the case, when in fact Defendant BARFIELD and others well knew that no such meeting had occurred, and that this affidavit was false.

b. Defendant BARFIELD, together with his co-conspirators, prepared and caused to be prepared additional false and perjurious affidavits repeating and supporting the fabricated accusation against Judge Gagliardi, and caused these affidavits to be filed under oath in support of a motion to recuse Judge Gagliardi from the Cape Coral case,

along with a motion to dismiss ^{and that case altogether.} ~~that case altogether.~~

c. Defendant BARFIELD ^{misleading} and his co-conspirators ^{lied} ~~lied~~ to and misled agents of the Federal Bureau of Investigation who were conducting a criminal investigation into the truth of the allegations, in order to conceal the falsity of their charges against Judge Gagliardi and to hide the unlawful purpose of their conspiracy.

d. Defendant BARFIELD, with the assistance of his co-conspirators, prepared and caused to be prepared fabricated documents purporting to corroborate the false accusation against Judge Gagliardi, and caused these fabricated documents to be submitted in response to a subpoena from a federal grand jury investigating this matter.

e. On or about December 9, 1997, Defendant BARFIELD knowingly provided false, misleading, and evasive testimony under oath to a federal grand jury, in order to support the false accusations against Judge Gagliardi, and to avoid the disclosure of both his own criminal conduct and that of his co-conspirators.

Perjurious Testimony

8. ^B In or about December 1997, Grand Jury No. 97-1-24, a Grand Jury of the United States in the Middle District of Florida, was investigating the allegation that Judge Gagliardi and AUSA Haley had been observed on February 8, 1997, meeting privately in a restaurant, discussing details of the Cape Coral case, and exchanging case-related documents. It was material to

the Grand Jury's investigation to determine whether this meeting actually took place, how and by whom it was observed if it did occur, and whether sworn affidavits purporting to recount the meeting were true or false.

9. On or about December 9, 1997, in the Middle District of Florida, while appearing as a witness and testifying under oath in a proceeding before Grand Jury No. 97-1-24, Defendant BARFIELD knowingly made numerous false material declarations when he was asked the following questions and gave the following answers believing the underscored material declarations to be false:

Q: I want to start, Mr. Barfield, by drawing your attention to the date of February 8, 1997, which is the date when Deana Scapaccino says that she saw Assistant U.S. Attorney Kathleen Haley with Judge Gagliardi in Plum's Cafe right?

A: Yes, sir.

* * *

Q: Now, when you saw Judge Gagliardi go out to play golf, what did you all do?

A: We went and ate lunch not too long after that. I think we were there approximately an hour, and we went back to Fort Myers, South Fort Myers, and ate lunch and then split up. [The second investigator] went back to the residence of the Wilderness to observe Judge Gagliardi, and myself and Ms. Scapaccino went to Cape Coral to Ms. Haley's residence.

* * *

Q: All right. Now, you split up, and this was about what time that you all split up?

A: I believe around 3 o'clock. It may have been after 3:00.

Q: And you went with Ms. Scapaccino, and whose car did you go in?

A: In my car.

Q: Where did you go?

A: We went to Ms. Haley's residence in Cape Coral, across the bridge.

Q: What happened?

A: We were there for a while. There was no activity at all. There was a station wagon that was parked outside the residence. After we were there, it was shorter than an hour, wasn't really long, we saw Ms. Haley's car leave the garage and get out on Cape Coral Parkway and head across the bridge.

Q: What was she driving?

A: A red Mazda.

Q: You say you saw the car leave the garage; did you see her in it?

A: No. But after — later on, I knew it was her because she got out at a bookstore in Fort Myers.

* * *

Q: And you were positioned there with Ms. Scapaccino?

A: Yes.

Q: And you both saw the car come out of the garage, down the driveway and down the street, and you followed it?

A: Followed her to Fort Myers across the bridge.

* * *

Q: And then what happened?

A: She stopped at kind of like a mini mall on the corner of Daniels and U.S. 41, went inside to a bookstore, and that may have been the point where we called [the second investigator]. She was in the bookstore a short period of time, exited the bookstore and left and got back on Highway 41.

* * *

Q: What bookstore was this; do you know?

A: It was a Barnes & Noble on the corner of Daniels and 41.

* * *

Q: And after you left the Barnes & Noble, what happened then?

A: We drove down 41 through Bonita Springs and followed her to a restaurant off of 41 and stopped. Ms. Scapaccino went inside and said that she was there alone. She decided to go inside. Obviously, I could not. I left because I had to be back in Sarasota for a commitment, and I called [the second investigator] to tell her where she was.

* * *

Q: So when you got to Plum's Cafe, what happened?

A: Ms. Haley parked her car in the rear, which is the only place you can park there. Deana went inside and followed her inside, came back out and told me she was there alone. I told her, she knew that I was going to be leaving, because I had to get back to Sarasota. She wanted me to make sure that [the second investigator] knew where -- to get a hold of [the second investigator], and I told her I would if I had to stop at a pay phone and call her again and let her know, because she knew the battery was dead.

* * *

Q: Was there anybody else you were reporting to in connection with this surveillance while it was ongoing?

A: I reported to [two of the attorneys handling the Cape Coral case].

Q: Anybody else you talked to about their surveillance during the course of the evening?

A: That evening I believe I spoke to [two of the attorneys] and possibly [the third attorney]; but I may not have spoken to [the third attorney] until the following day.

Q: What about [one of the defendants in the Cape Coral case]?

A: I did not tell him -- he knew it was going on, but I

did not tell him any of the things that occurred throughout that day.

* * *

Q: Ms. Scapaccino and [the second investigator] prepared some reports in connection with their surveillance. Are you aware of that?

A: Yes, I am.

Q: Have you seen their reports?

A: I have.

Q: Do they seem accurate to you?

A: By and large, yeah. I mean, if there were any inconsistencies, it was on minor issues. There were some names spelled wrong, which I didn't consider to be an inconsistency. I just told her how to spell the names.

Q: Outside of the spellings of the names, did you see any other problems?

A: Not that stuck out.

* * *

Q: And you believe the report is accurate, right?

A: Yes, sir.

Q: Do you have any knowledge that report is false?

A: None at all.

* * *

Q: Outside of making the spelling corrections, did you assist Ms. Scapaccino in writing her investigative report?

A: No.

* * *

Q: Now, how much money did they get paid, [the second investigator] and Ms. Scapaccino?

A: I have seen the bills and the totals that Mr. Johnson took care of that, and I don't know the entire amount. I know it was 5,000 or more dollars totally.

Q: Well, about \$2500 was the retainer, right?

A: Uh-huh.

Q: And I think there's a check for around \$1400, does that ring a bell?

A: I think so.

Q: Are you aware of any other payments they received either directly or indirectly?

A: No. I know Mr. Henley's fees were paid as well, and I know their expenses were paid.

Q: Outside of two checks, are you aware of any other payments that were paid to [the second investigator] or Deana Scapaccino?

A: No, sir.

Q: Did you give them any money?

A: No, sir.

* * *

Q: Did you at anytime ever meet with [the second investigator] or Deana Scapaccino or anyone else and discuss fabricating a story that Judge Gagliardi and Kathleen Haley met at Plum's Cafe?

A: No, sir.

Q: Did you participate in any way in fabricating a story that Judge Gagliardi and Kathleen Haley met on February 8?

A: No, sir.

Q: Are you aware of Deana Scapaccino, [the second investigator] or anyone else fabricating a story that a meeting between Kathleen Haley and Judge Gagliardi occurred?

A: Not at all.

Q: Are you aware of any aspects of Ms. Scapaccino's affidavit that are false?

A: No, sir.

Q: Are you aware of any aspects of her investigative reports today that are false?

A: No, sir.

10. Defendant Barfield acknowledges that the above underscored material declarations, made under oath during the Grand Jury session, were not true, and that he then and there well knew that the answers were not true, because in truth:

- a. There was no meeting or any other contact between Judge Gagliardi and AUSA Haley on February 8, 1997.
- b. Defendant BARFIELD did not participate in any surveillance of AUSA Haley on February 8, 1997. As such, Defendant BARFIELD did not observe AUSA Haley leaving her residence in Cape Coral, driving to a bookstore in Fort Myers, nor stopping at Plum's Cafe or any other restaurant off of Highway 41.
- c. Defendant BARFIELD, along with others, concocted the false story that Judge Gagliardi and AUSA Haley met together at a restaurant on February 8, 1997. Moreover, Defendant BARFIELD kept one of the defendants in the Cape Coral case fully apprised of the surveillance conducted on February 8, 1997.
- d. Defendant BARFIELD and others helped prepare and caused to be submitted false and perjurious affidavits on behalf of Ms. Scapaccino, and fabricated false

investigative reports from Ms. Scapaccino and the second investigator purporting to detail their surveillance of Judge Gagliardi and AUSA Haley on February 8, 1997.

- e. To compensate Ms. Scapaccino and the second investigator for their participation in this fraudulent scheme, Defendant BARFIELD personally delivered, and was present at the delivery of, cash payments to Deana Scapaccino and the second investigator. These payments were in addition to the fees they received by check.

WIRE FRAUD SCHEMES

11. From at least the Summer of 1998 through in or about January 1999, Defendant MICHAEL A. BARFIELD was employed as a paralegal by a St. Petersburg attorney to assist the attorney in providing legal representation to criminal defendants.

12. During late 1998 and early 1999, Michael Firelli was an incarcerated federal prisoner who had been convicted on charges of telemarketing fraud and who had retained the services of the St. Petersburg attorney to review his case for a possible post-conviction challenge or appeal.

13. In or about December 1998, in the Middle District of Florida and elsewhere, Defendant MICHAEL A. BARFIELD knowingly and willfully devised and intended to devise a scheme and artifice to obtain money and property from Michael Firelli and his brother by means of false and fraudulent pretenses, representations, and promises.

14. In approximately December 1998, unbeknownst to the St. Petersburg attorney, Defendant BARFIELD falsely represented to Michael Firelli's brother that he had secured a promise from the government that Michael Firelli would be granted leniency in exchange for a payment of restitution to Firelli's victims. In particular, Defendant BARFIELD told Firelli's brother that, in return for a \$25,000 restitution payment, the prosecution had agreed to recommend to the sentencing judge that Michael Firelli's sentence of incarceration be commuted to time served, resulting in Firelli's immediate release from prison on probation.

15. In fact, Defendant BARFIELD had secured no such promise of leniency from the government, had no intention of forwarding any payments to the government or victims of Firelli's crimes, and had intended all along to keep the money for himself.

16. On or about December 7, 1998, Defendant BARFIELD directed Firelli's brother to forward to him the \$25,000 restitution payment and an additional fee of \$500 in the form of checks made out to a "trust account" in the name of Michael Barfield, P.A.

17. On or about December 10, 1998, Firelli's brother mailed to Defendant BARFIELD two checks made out to the account of Michael Barfield, P.A., one in the amount of \$25,000 and a second in the amount of \$500.

18. Soon after receiving the checks from Firelli's brother in the mail, Defendant BARFIELD deposited them into his bank

account and used this money for personal expenditures.

19. For the purpose of executing his scheme, on or about December 7, 1998, in the Middle District of Florida, Defendant BARFIELD sent a two-page letter to Firelli's brother by fax transmission from St. Petersburg, Florida, to Mahwah, New Jersey. ~~facsimile~~. In this letter, BARFIELD falsely summarized a purported agreement he had reached with the government on behalf of Michael Firelli, and he directed Firelli's brother to send BARFIELD a total of \$25,500 in order to obtain the promised leniency for Michael Firelli.

20. From at least the Summer of 1998 through in or about January 1999, Nicholas Grant was an incarcerated federal prisoner; Grant, a Jamaican national, was represented by the St. Petersburg attorney.

21. From in or about July 1998 through January 1999, in the Middle District of Florida and elsewhere, Defendant MICHAEL A. BARFIELD knowingly and willfully devised and intended to devise a scheme and artifice to obtain money and property from Nicholas Grant and his girlfriend by means of false and fraudulent pretenses, representations, and promises.

22. Beginning in approximately the Summer of 1998, unbeknownst to the St. Petersburg attorney Defendant MICHAEL A. BARFIELD falsely represented to ^{Nicholas Grant AND} Nicholas Grant's girlfriend, Claire Stone, that in exchange for providing him with substantial payments of cash, Defendant BARFIELD could secure Grant's early release from prison.


23. Between approximately July 1998 and January 1999, Defendant BARFIELD requested and received from Claire Stone three separate cash payments totaling \$25,000. In accepting these cash payments, Defendant Barfield assured Ms. Stone that the money would be spent to secure Nicholas Grant's early release from federal prison.

24. Notwithstanding these assurances, Defendant BARFIELD never had any intention of using this money to secure Nicholas Grant's early release from prison; rather, Defendant BARFIELD intended all along to keep the money for himself.

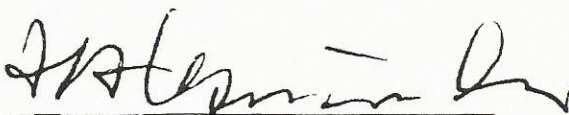
25. After accepting the \$25,000 in cash payments from Claire Stone, Defendant BARFIELD used this money for personal expenditures.


26. In order to execute this scheme involving Nicholas Grant, Defendant BARFIELD, in or about December 1998, initiated a telephone call from ~~Ontario~~ ^{BRITISH COLUMBIA}, Canada to Coral Gables, Florida, for the purpose of obtaining money from Claire Stone and falsely assuring her that this money would be used to secure the release of Nicholas Grant.

AGREED:


Michael A. Barfield
Defendant

Date: 3-9-99


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Date: March 11, 1999