

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	*	CRIMINAL NO. 20-80
	*	SECTION: "P"
v.		
RODERICK HICKMAN	*	
LOIS RUSSELL		
JAMES WILLIAMS	*	
a/k/a "Curtis Williams"		
TANYA GIVENS	*	
JOHN DIGGS		
HENRY RANDLE	*	
RYAN WHEATEN		
DAKOTA DIGGS	*	
BERNELL GALE		
MARVEL FRANCOIS	*	
TROY SMITH		

\* \* \*

FACTUAL BASIS AS TO TROY SMITH

Should this matter have gone to trial, the government would have proved through the introduction of reliable testimony and admissible tangible exhibits, including documentary evidence, the following to support the allegations charged by the government in Count 1 of the Indictment now pending against the defendant, TROY SMITH, charging him with a violation of Title 18, United States Code, Section 371, namely, conspiracy to commit mail fraud. The Defendant, along with his co-conspirators and others, beginning at a time unknown and continuing through the present, in the Eastern District of Louisiana, and elsewhere, conspired to commit mail fraud in connection with staged accidents, including two that occurred on May 17, 2017.

May 17, 2017 Accidents

Prior to May 2017, TROY SMITH ("SMITH") and MARVEL FRANCOIS ("FRANCOIS") were aware that Co-Conspirator A and Co-Conspirator C helped to arrange

AUSA *BK*  
Defendant *D.S.*  
Defense Counsel *AL*

staged automobile accidents. On a date unknown but prior to May 16, 2017, Co-Conspirator C informed SMITH that Co-Conspirator C could arrange for SMITH to be in a staged accident sometime, and SMITH expressed interest in doing so. On or about May 16, 2017, Co-Conspirator C asked SMITH if he was interested in participating in a staged automobile accident in New Orleans, Louisiana the next day, and SMITH responded affirmatively. Co-Conspirator C told SMITH that he would have to find others to participate in the accident. SMITH contacted BERNELL GALE ("GALE") and asked if GALE wanted to participate in a staged automobile accident in New Orleans, and GALE agreed to do so. SMITH also recruited his family member, Passenger A.<sup>1</sup> On or about May 16, 2017, Co-Conspirator C asked FRANCOIS if she wanted to be in a staged automobile accident in New Orleans the next day. FRANCOIS agreed.

At trial, the government would present text messages showing that, on or about May 16, 2017, Co-Conspirator A contacted Damien Labeaud ("Labeaud") to arrange for Labeaud to help stage two automobile accidents the next day. Labeaud was known as a "slammer," or an individual who drove vehicles and intentionally collided with 18-wheeler tractor-trailers in order to stage accidents. Phone records show that Labeaud then contacted Mario Solomon ("Solomon"), to arrange for Solomon to serve as a "spotter," or an individual who would follow Labeaud in a separate vehicle and would pick up Labeaud after the staged accidents in order to flee the scene and evade detection.

Phone records further evidence that, on the morning of May 17, 2017, prior to the accidents, Attorney A called Co-Conspirator A four times. Co-Conspirator A also texted Labeaud to provide status updates regarding Co-Conspirator A's travel from the area of Gibson,

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<sup>1</sup> Passenger A died in an unrelated auto accident on or about July 22, 2018.

Louisiana to New Orleans, Louisiana. Phone records also show that FRANCOIS and Co-Conspirator A exchanged phone calls on May 17, 2017, both in the morning and at night.

SMITH, GALE, FRANCOIS, and Passenger A traveled from the area of Houma/Gibson, Louisiana to a parking lot by a fast food restaurant in New Orleans, Louisiana, in a blue 2007 Dodge Durango ("Durango") that belonged to FRANCOIS' son. In the parking lot, SMITH, GALE, FRANCOIS, and Passenger A met with individuals including Henry Randle ("Randle"), Ryan Wheaton ("Wheaton"), Dakota Diggs ("D. Diggs"), Labeaud, and Solomon. Solomon was in a silver Chevrolet Silverado pick-up truck ("Silverado"). At trial, the government would present evidence that Co-Conspirator A, Co-Conspirator C, and Tanya Givens also traveled to New Orleans that day. It was agreed that Labeaud would stage a car accident first with a white 2004 Ford F-150 truck belonging to Co-Conspirator C ("Ford F-150") and then he would stage a car accident with the Durango.

Labeaud got into the driver's seat of the Ford F-150. SMITH, GALE, and FRANCOIS observed that Randle, Wheaton, and D. Diggs were in the Ford F-150 as well. SMITH, GALE, FRANCOIS, and Passenger A followed the Ford-F-150 in the Durango. Surveillance footage from a nearby building captures a 2006 Freightliner tractor-trailer merging onto US Highway 90, followed by a blue Dodge Durango, a white Ford-F-150, and a silver Chevrolet Silverado.

Phone records show that, at approximately 1:01 P.M., Solomon texted Labeaud, "Watch that white truck on the right hand side." Shortly after that, SMITH, GALE, and FRANCOIS observed Labeaud, while driving the Ford F-150 on Calliope Street, intentionally speed up and collide with a tractor-trailer that was merging onto US Highway 90 Eastbound. Labeaud exited the Ford F-150 after the collision to make it appear that Randle was driving. Solomon waved down the driver of the tractor-trailer and stated that the tractor-trailer had caused the accident.

Phone records indicate that Wheaten exchanged phone calls with SMITH, Co-Conspirator A, and Co-Conspirator C both before and after this accident. Co-Conspirator A also texted Labeaud after this accident. An NOPD officer arrived at the scene. NOPD dash camera footage captures Randle falsely reporting that he was the driver of the F-150, and that the tractor-trailer had struck the F-150. Phone records show that Randle called Co-Conspirator A and Co-Conspirator C later that afternoon, and that Wheaten called Co-Conspirator A that afternoon.

At trial, the Government would present evidence that personal injury lawsuits were subsequently filed on behalf of Randle, Wheaten, and D. Diggs, seeking damages from Stevie B's Trucking, National Union Fire Insurance Company of Pittsburgh, PA ("NUFIC"), and Truck Driver B in connection with the May 17, 2017 staged accident involving the Ford F-150. The allegations in these lawsuits were false in that they did not contain information about how Labeaud intentionally caused the May 17, 2017 accident between the Ford F-150 and the 2006 Freightliner tractor-trailer. Furthermore, the lawsuits falsely alleged that Randle had been the driver of the Ford F-150 during the accident and omitted material information about how the passengers had agreed to stage the accident with Labeaud. At trial, the Government would present evidence that the loss amount associated with these lawsuits was \$10,000.00, which was paid on behalf of D. Diggs. Specifically, NUFIC paid \$5,000, and Randle's insurance company, Financial Indemnity Company, paid \$5,000.00.

After the Ford F-150 accident, SMITH, GALE, FRANCOIS, and Passenger A agreed to allow Labeaud to drive the Durango. SMITH, GALE, FRANCOIS, and Passenger A remained in the Durango. Labeaud drove the Durango to locate another vehicle to collide with. Just before 2:00 P.M., while driving on Chickasaw Street in New Orleans, Labeaud intentionally collided with a 2017 Peterbilt tractor-trailer operated by Tennessee Commercial Warehouse, Inc.

("TCW"), which was turning onto Louisa Street. Labeaud exited the Durango after the collision. FRANCOIS got behind the wheel of the Durango to make it appear that FRANCOIS was driving the vehicle at the time of the staged accident. Labeaud instructed the passengers to state that they were stopped at the stop sign when the collision occurred. The Government would present evidence at trial that Labeaud was picked up by Solomon in the Silverado, and as he was leaving, Labeaud shout at the driver of the tractor-trailer, in sum and substance, "Didn't you see the car at the stop sign?"

9-1-1 recordings capture FRANCOIS contacting the NOPD and falsely reporting that a tractor-trailer had struck her vehicle. SMITH, GALE, FRANCOIS, and Passenger A waited several hours for NOPD to arrive at the scene of the accident. NOPD body camera footage shows that, when an NOPD officer arrived, FRANCOIS falsely stated that she had been driving the Durango and that the tractor-trailer had struck her vehicle.

After making the false police report, SMITH, GALE, FRANCOIS, and Passenger A went to a Starbucks on Canal Street to meet with Attorney A and discuss Attorney A's representation of SMITH, GALE, FRANCOIS, and Passenger A. FRANCOIS told Attorney A that they were not sure who to say was driving, because FRANCOIS insured the Durango, but SMITH had a CDL license. Attorney A responded that it did not matter who they listed as the driver, because the tractor-trailer's insurance would take care of the damages. During the meeting, Attorney A asked SMITH, GALE, FRANCOIS, and Passenger A if they were injured in the accident. SMITH, GALE, FRANCOIS, and Passenger A all replied that they were not injured or hurt in the accident. Attorney A then explained that their recovery would depend on the amount and type of medical treatment they received. Attorney A said if someone elected to have surgery, he or she could expect to receive a much greater settlement. SMITH, GALE, and FRANCOIS, elected

not to have surgery. Attorney A referred GALE and SMITH to a chiropractor, and referred FRANCOIS to a pain specialist.

On or about March 1, 2018, Attorney A's law partner, Attorney B, mailed an envelope via the United States Postal Service ("USPS") from Louisiana to Gallagher Basset [sic], P.O. Box 2934, Clinton, Iowa 52733, containing a settlement demand on behalf of GALE. On or about May 17, 2018, Attorney A filed a Petition for Damages in Civil District Court for the Parish of Orleans in the State of Louisiana ("CDC"), on behalf of SMITH, GALE, and Passenger A ("Smith Lawsuit"). The Smith Lawsuit was a personal injury lawsuit seeking damages from TCW, Zurich American Insurance Company ("Zurich"), GoAuto Insurance Company ("GoAuto"), FRANCOIS, and Truck Driver B in connection with the May 17, 2017 staged accident involving the Durango. That same day, a Petition for Damages was also filed on behalf of FRANCOIS in the CDC ("Francois Lawsuit"). The Francois Lawsuit was a personal injury lawsuit seeking damages from TCW, Zurich, and Truck Driver B in connection with the May 17, 2017 staged accident involving the Durango.

On or about June 5, 2018, Attorney B mailed a copy of the Smith Lawsuit via the USPS from New Orleans, Louisiana to Truck Driver A in Jackson, Mississippi. On or about July 12, 2018, Attorney B signed an affidavit of service, notarized by Attorney A, and filed it in conjunction with the Smith Lawsuit. This affidavit verified that Attorney B had placed the Smith Lawsuit in the mail. The allegations in the Smith Lawsuit were false in that they did not contain information about how Labeaud intentionally caused the May 17, 2017 accident between the 2017 Peterbilt tractor-trailer and the Durango. Furthermore, the Smith Lawsuit falsely alleged that FRANCOIS had been the driver of the Durango during the accident and omitted material

information about how the passengers had agreed to stage the accident with Labeaud. No settlement funds were paid in connection with the Smith Lawsuit or the Francois Lawsuit.

GALE received "loans" or "client advances on settlement" from Attorney A, in the form of checks in the amounts of \$500.00 on or about June 23, 2017, and \$500.00 on or about November 30, 2017.

June 6, 2017 Accident

After SMITH's accident, Co-Conspirator C asked SMITH if he knew anyone else who was interested in being involved in a staged automobile accident. SMITH recruited Lucinda Thomas ("Thomas") to be in a staged accident. On or about June 6, 2017, Co-Conspirator C informed SMITH that Thomas could be in an accident that day. SMITH called Thomas and said, "It's on if you want to do it." Thomas agreed to be in a staged accident that day. SMITH then told Co-Conspirator C that Thomas would participate in an accident.

SMITH's phone records show that SMITH spoke to Co-Conspirator A, Co-Conspirator C, and Thomas numerous times throughout the day on June 6, 2017. Phone records also show that Co-Conspirator A and Co-Conspirator C spoke to each other numerous times that day. Additionally, Co-Conspirator A exchanged three texts with Attorney A at around 10:00 A.M. that morning, and then Co-Conspirator A called Labeaud shortly thereafter.

SMITH obtained instructions from Co-Conspirator A and/or Co-Conspirator C, and then directed Thomas to drive from Houma to a Burger King parking lot in New Orleans to meet with Labeaud. Co-Conspirator A texted Labeaud instructions, "Avalanche at Burger King." Thomas drove to New Orleans in her vehicle, a 2009 Chevrolet Avalanche ("Avalanche"), with Judy Williams ("Williams"), Mary Wade ("Wade"), and Dashontae Young ("Young"). Thomas called SMITH when she arrived at the Burger King. SMITH then informed Co-Conspirator A and/or

Co-Conspirator C that Thomas had arrived at the agreed-upon location. Co-Conspirator A texted Labeaud and asked where he was. Subsequently, Labeaud arrived at Burger King, and got into the driver's seat of the Avalanche, with Thomas, Wade, Williams, and Young as passengers.

At approximately 12:30 P.M., Labeaud intentionally collided the Avalanche with a 2017 Freightliner tractor-trailer that was merging onto Chef Menteur Highway. After the accident, Labeaud instructed Thomas to tell NOPD that she had been driving, and then to meet Attorney A at a Raising Cane's restaurant. Thomas, Wade, Williams, and Young all hired Attorney A to represent them.

On June 5, 2018, Attorney A filed a personal injury lawsuit on behalf of Thomas in the CDC ("the Thomas Lawsuit"). On June 8, 2018, the Thomas Lawsuit was removed to the United States District Court for the Eastern District of Louisiana. On or about May 9, 2019, SMITH was deposed by insurance defense attorneys in connection with the Thomas Lawsuit. During the deposition, SMITH was questioned about why he had exchanged approximately 18 calls with Thomas on June 6, 2017, prior to her car accident. In response to questioning, SMITH falsely denied discussing Thomas's car accident during these calls.



In June 2019, SMITH met with Attorney A, at which time, Attorney A instructed SMITH to drop the Smith Lawsuit because there was growing suspicion that Thomas's accident was fraudulent. In or about June 2019, Attorney A prepared and had SMITH sign a Verification of Facts that SMITH did not read. Among other things, this Verification of Facts falsely stated that SMITH's accident on May 17, 2017 was not staged. SMITH did not receive a settlement in connection with the Smith Lawsuit. Additionally, no settlement was paid on behalf of Francois or Gale. With respect to Thomas's accident, the Government would present evidence at trial that the loss to Covenant Transportation Group was \$43,000.00.

In sum, the Government's evidence would prove the defendant, TROY SMITH, conspired to commit mail fraud by causing mailings in connection with the filing of the Smith Lawsuit seeking monetary damages that was premised on falsehoods in connection with the May 17, 2017 staged automobile accident.


#### Limited Nature of Factual Basis


This proffer of evidence is not intended to constitute a complete statement of all facts known by SMITH, and/or the government. Rather, it is a minimum statement of facts intended to prove the necessary factual predicate for his guilty plea. The limited purpose of this proffer is to demonstrate that there exists a sufficient legal basis for the plea of guilty to the charged offense by SMITH.


T.S. BK  
AK

The above facts come from an investigation conducted by, and would be proven at trial by credible testimony from, *inter alia*, Special Agents and forensic examiners from the Federal Bureau of Investigation and admissible tangible exhibits in the custody of the FBI.

READ AND APPROVED:

  
\_\_\_\_\_  
TROY SMITH  
Defendant

  
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ARTHUR LEMANN, IV  
Counsel for Defendant

  
\_\_\_\_\_  
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