

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA	*	CRIMINAL NO. 20-80
	*	SECTION: "I"
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 BERNELL GALE

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, **BERNELL GALE**, 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 two staged accidents that occurred on May 17, 2017.

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

AUSA BR
Defendant BE
Defense Counsel DM

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.¹ 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, 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.

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

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 Wheaten (“Wheaten”), 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, Wheaten, 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-trailing 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.

In sum, the Government’s evidence would prove the defendant, **BERNELL GALE**, 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 **GALE**, 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 **GALE**.

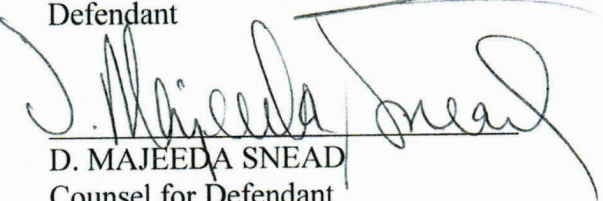
The above facts come from an investigation conducted by, and would be proven at trial by credible testimony from, *inter alia*, Special Agents and forensic examiners from the Federal Bureau of Investigation and admissible tangible exhibits in the custody of the FBI.

READ AND APPROVED:



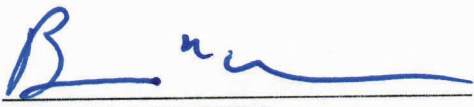
BERNELL GALE

Defendant



D. MAJEEDA SNEAD

Counsel for Defendant



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