

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. CR-14-20-JHP

JASON BRETT MERIDA,

Defendant.

GOVERNMENT'S TRIAL BRIEF

COMES NOW the United States of America, by and through Mark F. Green, United States Attorney, and Assistant United States Attorneys Douglas A. Horn and Christopher J. Wilson, and hereby submits the following trial brief.

I. STATEMENT AND STATUS OF CASE

On February 25, 2014, Defendant was indicted by a federal grand jury charged with Count One – Conspiracy to Commit Theft or Bribery of Programs Receiving Federal Funds, a violation of 18 U.S.C. § 371; Counts Two and Three – Theft by an Employee or Officer of a Tribal Government Receiving Federal Funds, violations of 18 U.S.C. §§ 666(a)(1)(A) & 2; Count Three – Theft by an Employee or Officer of a Tribal Government Receiving Federal Funds, a violation of 18 U.S.C. §§ 666(a)(1)(A) & 2; Counts Four and Five – Conspiracy to Commit Money Laundering, violations of 18 U.S.C. § 1956(h); and Counts Six and Seven – Tax Fraud, violations of 26 U.S.C. § 7206(1). On March 6, 2014, Defendant entered a not guilty plea and the case was set for trial. On March 27, 2014, the Court granted a Motion to declare the case a complex matter. On July 8, 2014, Defendant's motion for appointment of additional counsel was granted. The case is set for jury trial on October 27, 2014. The government intends to call

approximately 20 witnesses and believes the trial will take approximately 10 days. The government anticipates the introduction of approximately 180 exhibits. On October 16, 2014, attorneys for the government and counsel for the Defendant reviewed each exhibit. The parties agreed on the admission of all but two exhibits. One of the two exhibits in question will not be offered by the government and the second exhibit will be argued to the Court at the time the government intends to admit the exhibit.

II. SUMMARY OF FACTS

The Choctaw Nation of Oklahoma (CNO) is a federally-recognized Indian tribal government, which is subject to the laws of the United States. The CNO owns land, both in fee and in trust, which falls under the jurisdiction and superintendence of the United States Government. The CNO receives Federal funding well in excess of \$10,000 in each year relevant to this investigation. The CNO Tribal Council passed a bill which funded construction of several casinos on the CNO's land, including a casino located at Durant, Oklahoma. The Defendant, JASON BRETT MERIDA was the Executive Director over the construction at the CNO, which included approving invoices received from contractors for work the contractors claimed to have completed.

The CNO hired Flintco Construction (Flintco) as its general contractor to oversee all of the CNO's construction and remodeling projects. BUILDERS STEEL is a subcontractor that was hired by Flintco and approved by CNO to oversee both the fabrication and the erection of the steel used in many CNO building projects, including the Tuskahoma projects, the Idabel casino, the Stringtown casino, the Grant casino, the McAlester Casino, the Durant casino/parking garage/hotel, the Hugo Wellness Center and the Hugo Social Services project. LAURI PARSONS (LPARSONS) is the Chief Executive Officer/Owner of BUILDERS STEEL. Her

husband, BRENT PARSONS (BPARSONS), is the Executive Vice President/Customer Service Representative of BUILDERS STEEL.

STEEL FRAUD

The Federal Bureau of Investigation (FBI), Oklahoma City Division, received allegations that the CNO had been defrauded by contractors who were submitting false invoices. Among the allegations was BUILDERS STEEL submitted a proposal, through Flintco, for the pre-purchase of steel for future CNO projects. BUILDERS STEEL represented to the CNO that the steel was coming from a cancelled hotel/casino project in Las Vegas, Nevada, and that pre-purchasing the steel would save the CNO \$3.5 million in steel costs.

The FBI interviewed Bruce Barnett, the internal auditor for the CNO. He provided the following information: The CNO agreed to pre-purchase steel beams at a price of \$8,500,000 from Builders Steel, for construction and expansions to the Pocola Casino and Hotel that was to take place in the undetermined future.

Barnett stated that in December 2009, the CNO Business Committee received a proposal from MERIDA for this pre-purchase. This proposal, which originated from a discussion between GIFFORD, BPARSONS and MERIDA, urged the Committee to purchase steel beams in December because steel prices were projected to increase significantly. The proposal was based upon market projections from Builders Steel, expecting up to a 20% increase in steel prices during calendar year 2010.

An electronic mail (e-mail) was located which was sent on December 03, 2009, from BPARSONS to GIFFORD stating if all the steel for the CNO Pocola project could be purchased by the next day, Builders Steel could save the CNO approximately \$3.5 million. This e-mail further stated the steel to be purchased was \$10.3 million less a \$2.0 million credit from the CNO

Idabel project, which would leave a cost of \$8.3 million for the steel for the CNO. According to the e-mail chain, GIFFORD forwarded PARSONS' e-mail to MERIDA approximately two minutes later.

A follow-up letter from LPARSONS dated December 22, 2009 was submitted to MERIDA stating there was a substantial price difference between now and April that presents the opportunity to purchase the steel needed for the Pocola project at a greater cost savings than current steel market prices. The letter further stated that purchasing the steel now would allow an additional 20% in savings. This letter was signed by LPARSONS.

The investigation revealed a copy of Builders Steel's Proposal No. 7991 which was dated October 1, 2009. This proposal was for the Pocola Casino project. The based bid price for material and erection was \$9,642,340.00. This proposal was signed by BPARSONS as Vice-President of Marketing for Builders Steel and GIFFORD. GIFFORD'S signature authorized Builders Steel to do the work specified in this proposal.

Barnett further stated that the proposal to the Business Committee only quoted a dollar amount (\$10.5 million), not the price per pound or quantity. Additionally, a \$2,000,000 credit memo on steel previously purchased for an Idabel, OK building project was added to the pre-purchase agreement. Builders Steel agreed to the credit memo as part of the proposal and reduced the Pocola commitment to \$8,500,000. Barnett stated that the proposal was approved and CNO paid \$4,250,000 as a down payment for the steel.

Invoices reviewed show the total payments to Builders Steel for Pocola steel include the following through September 30, 2010. The invoices are detailed on the table below:

Date	Amount	Builder Steel Invoice Submitted to CNO
01/07/2010	4,250,000	09-925m
03/30/2010	1,500,000	10-213m
05/07/2010	500,000	10-291
06/01/2010	500,000	10-361m
09/30/2010	500,000	10-577
Total	<u>7,250,000</u>	

Barnett stated that it was later determined that the CNO did not know how much steel was purchased, what the cost per pound was, where the steel was being stored, if it was already fabricated, or the condition of the steel. On October 12, 2010, Barnett and two other CNO employees drove to Builders Steel in Tulsa in order to view the steel beams pre-purchased by the CNO.

Karen Douglas (Douglas), a 30-year employee at Builders Steel, emailed an inventory list of steel beams to Barnett. The CNO auditors brought that list to Builders Steel to conduct the audit. That same list was attached to each payment listed above as support for the payments. As far as the CNO Audit team knew, this list would match the steel beams at Builders Steel. Approximately thirty minutes into the test counting process, LPARSONS produced another list of steel from their internal count conducted on or about September 30, 2010. This list did not contain as much steel as the original list. Throughout the audit process at Builders Steel, LPARSONS and BPARSONS kept changing the steel piles that were to be counted, and the list the auditors were using to verify the steel. Upon conclusion of the audit, the steel viewed on the lot of Builders Steel did not match either of the steel inventory lists. An inventory of 2,418,942

pounds was observed on October 14, 2010. Builders Steel was short 2,401,542 pounds of steel, based on audit performed by the CNO Audit team.

The CNO auditors returned to Durant and began the process of calculating the number of pounds purchased from Builders Steel. A three page list of steel beams was attached to the first payment for the Pocola steel. This list contained the product number, length of each beam, and the quantity. A CNO audit calculated that the CNO agreed to purchase 4,558,402 pounds of steel beams. Douglas verified via email that CNO agreed to purchase 4,563,833 pounds. Using the conservative 4,558,402 pounds, CNO effectively committed to pay \$1.86 per pound for the steel, although there were no clear quantities indicated on any invoices. Based on this price, Builders Steel owed the CNO approximately \$4.5 million based on the purchase price of \$1.86 per pound.

Barnett stated that the CNO researched quotes from not less than three other suppliers/consultants. Quotes for the price of steel fluctuated from the most conservative \$0.38 to \$0.63 per pound. It was determined by the CNO Audit team, that Builders Steel was not holding the full inventory purchased by the CNO, and over charged the CNO a price of \$1.86 per pound, when the market price was approximately \$0.63 per pound.

In an interview with agents on September 13, 2012, MERIDA stated while Executive Director of Construction at the CNO, he received things of value from BPARSONS to include two Mule ATV's, a Cadillac Escalade (for approximately \$55,000 reduced price of market value), a television, three Bose stereo systems and approximately thirty firearms. MERIDA received a vacation to play golf at Pebble Beach with GIFFORD and Max Bennett, another Flintco employee, and two hunting trips to Acoma, NM. MERIDA and his wife also went to Puerto Vallarta, Mexico with the PARSONSES. MERIDA's wife received two Louis Vuitton

purses and wallets from the PARSONSES. MERIDA stated that he received these items from the PARSONSES as influence to make sure Builders Steel was the steel supplier for CNO builder projects.

SCOTT RICE FRAUD

FBI Oklahoma City received a complaint from Elena Harris, former CFO of Scott Rice, LLC. Scott Rice is a business furniture supply company located in OKC. Scott Rice had a second office in Tulsa, OK. The owner of Scott Rice was George Basore. JAMES WINFIELD STEWART was a sales executive in the Tulsa office.

In early 2010, MERIDA, B PARSONS and STEWART were having lunch in Durant. There was a discussion about a hunting trip PARSONS and MERIDA had taken together. They discussed going on a safari in Africa. MERIDA advised STEWART that the CNO would pay for the trip, but the money needed to go through Scott Rice. MERIDA said that GIFFORD would assist in making it happen. The plan was for Scott Rice to submit false invoices (totaling \$345,000). The false invoices would be approved by GIFFORD and MERIDA for payment. STEWART persuaded BASORE to approve the trip because it was important to stay in the inner circle in order to get future furniture contracts with the CNO.

Once the first fraudulent check was received by Scott Rice, Elena Harris recommended that the funds be tracked in a ledger account. An initial down payment was wired to Madabula Safaris. At the request of MERIDA, STEWART began making purchases of firearms and other equipment for the safari. In March 2010, STEWART met GIFFORD at Mathis Bros furniture. STEWART picked out several pieces of furniture. STEWART was advised by MERIDA that monies from the fund should be used to buy furniture to furnish GIFFORD's new house.

(NOTE: In March 2010, L PARSONS, B PARSONS and GIFFORD formed L,B&D LLC in

order to purchase a home in Mannford, OK. GIFFORD had requested that the PARSONSES buy him a home. The PARSONSES agreed in order to influence GIFFORD on future construction projects with the CNO)

STEWART began making reimbursement requests from Scott Rice for the purchases. Elena Harris questioned the legitimacy of the furniture purchases. She was advised by BASORE that even though it looked “squirrely” it was necessary to maintain good relationship with the CNO.

Furniture was purchased for MERIDA, GIFFORD, B & L PARSONS, the PARSON’s nanny, and others. Numerous firearms were also purchased. Eventually, after the money was spent, Elena Harris confronted BASORE about the transactions. BASORE refused to do anything about it and Harris resigned.

MISSOURI HUNTING FRAUD

In 2008 or 2009, Brian Fagerstrom, President of an architectural firm doing business with the CNO named the Worth Group, purchased a hunting trip for two at one of the Chief Pyle’s fundraising auctions. The trip cost approximately \$10,000 at the Heartland Wildlife Ranch in northeast Missouri. Fagerstrom asked MERIDA to go on the trip with Fagerstrom and MERIDA agreed. In November 2009, MERIDA travelled to the Heartland Ranch with BPARSONS in the Builders Steel private jet where they met Fagerstrom, who had driven to the ranch from Denver. Over the course of the next three days, MERIDA and BPARSONS killed approximately \$160,000 in exotic animals provided by Heartland Ranch. When Fagerstrom informed MERIDA that Fagerstrom could not pay such a bill, MERIDA instructed Fagerstrom to submit a false Worth Group invoice to the Choctaw Nation in the amount of \$200,000 to pay for the hunting trip. Fagerstrom did as instructed and MERIDA caused the \$200,000 invoice to be paid in an

expedited manner so that Fagerstrom could pay the outstanding bill at Heartland Ranch.

III. LEGAL AUTHORITIES

Count I of the Indictment charges that Defendant Merida conspired with others known and unknown to commit certain offenses in violation of 18 U.S.C. § 371. Specifically, the indictment alleges three separate objects of the conspiracy: (1) Corruptly Soliciting, Demanding, Accepting or Agreeing to Accept Anything of Value by an Employee or Officer of an Indian Tribal Government Receiving Federal Funds in violation of 18 U.S.C. § 666(a)(1)(B); (2) Theft by an Employee or Officer of an Indian Tribal Government Receiving Federal Funds in violation of 18 U.S.C. § 666(a)(1)(A); and (3) Theft by an Employee or Officer of an Indian Tribal Government Receiving Federal Funds in violation of 18 U.S.C. § 666(a)(1)(A).

In order to prove a defendant guilty of conspiracy in general, the government must prove that “(1) two or more persons agreed to violate the law, (2) the defendant knew the essential objectives of the conspiracy, (3) the defendant knowingly and voluntarily participated in the conspiracy and (4) the alleged coconspirators were interdependent.” *United States v. Baldrige*, 559 F.3d 1126, 1136 (10th Cir.) (further quotation omitted), *cert. denied*, ___ U.S. ___, 129 S.Ct. 2170, 173 L.Ed.2d 1165(2009).

The critical inquiry in determining whether there was an agreement to commit an unlawful act is “whether the circumstances, acts and conduct of the parties were of such a character that the minds of reasonable men may conclude therefrom than an unlawful agreement existed.” *United States v. McCullough*, 457 F.3d 1150, 1159-60 (10th Cir. 2006) *quoting United States v. Morehead*, 959 F.2d 1485, 1500 (10th Cir. 1992). The existence of an unlawful agreement “may be inferred from the facts and circumstances of the case.” *Id.* at 1160 *quoting United States v. Evans*, 970 F.2d 663, 669 (10th Cir. 1992). The fourth element, interdependence,

exists “where each coconspirators’ activities constituted essential and integral steps toward the realization of a common, illicit goal.” *Id.* at 1161 *quoting United States v. Edwards*, 69 F.3d 419, 432 (10th Cir, 1995). For a criminal conspiracy to exist there must be a “shared, single criminal objective.” *Baldrige*, 559 F.3d at 1136.

Counts Two and Three of the Indictment allege violations of 18 U.S.C. § 666 - Theft by an Employee or Officer of an Indian Tribal Government Receiving Federal Funds. In order to be convicted of these offenses the government must prove: 1) the defendant was an employee, director, officer, manager or representative of an Indian tribal government; 2) during the period alleged in the indictment, the defendant did embezzle, steal, obtain by fraud, or otherwise without authority convert to the use of any person not the rightful owner, property of a value of \$5,000 or more; 3) the property was owned by or under the care, custody, or control of the Indian tribal government; and 4) the Indian tribal government received benefits in excess of \$10,000 in the one-year period, pursuant to a federal program involving grants and federal program funds.

The parties have entered into a stipulation that the Choctaw Nation of Oklahoma (CNO) was an Indian Tribal government, organization or agency that received benefits in excess of \$10,000.00 under a Federal program or programs involving a grant, contract, subsidy, loan, guarantee, insurance or other form for Federal Assistance for the calendar years 2007, 2008, 2009, 2010 and 2011.

Counts Four and Five of the Indictment allege violations of 18 U.S.C. § 1956(h) - Conspiracy to Commit Money Laundering pursuant to 18 U.S.C. § 1957. In order to be convicted of these offenses the government must prove: 1) that there was an agreement between two or more persons to commit money laundering; and 2) that the defendant joined the agreement knowing its purpose and with the intent to further the illegal purpose. A Section 1957

money laundering violation is engaging in, or attempting to engage in, a monetary transaction in criminally derived property of a value greater than \$10,000.00, which is derived from specified unlawful activity. In the instant case, the evidence will demonstrate that monetary transactions were completed using funds which were derived from violations of 18 U.S.C. § 666, which is a specified unlawful activity as defined in 18 U.S.C. § 1956(c)(7)(D).

Finally, Counts Six and Seven of the Indictment allege Tax Fraud in violation of 26 U.S.C. § 7206(1). In order to be convicted of tax fraud the government must prove: 1) the defendant signed an income tax return that contained a written declaration that it was made under the penalties of perjury; 2) the return contained a false statement that failed to accurately report defendant's annual income in that the return did not report all of defendant's income for the year alleged in each count of the indictment; 3) the defendant knew that statement was false; 4) the defendant acted willfully, that is, with the voluntary intent to violate a known legal duty; and 5) the statement was material. Pursuant to *James v. United States*, 366 U.S. 213 (1961), any monies or property obtained by a defendant by means of fraud or other illegal acts is taxable income. In this case, the money or valuable items the defendant corruptly received from people or businesses that intended to influence or reward the defendant, must be have been reported as income on his federal tax form. Likewise, the money or valuable items that defendant embezzled or stole from the Choctaw Nation of Oklahoma must also have been reported as income on his federal tax form.

IV. POTENTIAL EVIDENTIARY ISSUES

The Defendant is charged with a conspiracy. Consequently, the Government will elicit testimony concerning statements made by Merida and other co-conspirators in furtherance of the conspiracy. Under FRE Rule 801(d)(2)(E), a co-conspirators' statements made be admitted into

evidence if made in during and in furtherance of the conspiracy. Before admitting such evidence, the court must determine “(1) by a preponderance of the evidence, a conspiracy existed, (2) the declarant and the defendant were both members of the conspiracy, and (3) the statements were made in the course of and in furtherance of the conspiracy.” *United States v. Morgan*, 748 F.3d, 1024, 1036 (10th Cir. 2014).

V. CONCLUSION

The United States respectfully submits the Trial Brief for the assistance of the Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, hereby certify that on October 17, 2014, I electronically transmitted the attached documents to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Rex Earl Starr, Attorney for Jason Brett Merida
J. Lance Hopkins, Attorney for Jason Brett Merida

s/Christopher J. Wilson
CHRISTOPHER J. WILSON
Assistant United States Attorney