

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

UNITED STATES OF AMERICA)	
)	2:16-cr-00028-JMS--DML-1
)	
v.)	
)	Violations: Title 18, United States Code,
)	Sections 666, 1001, and 1343
FRANKLIN V. FENNELL)	

GOVERNMENT'S MOTIONS *IN LIMINE*

The United States of America, by counsel, Josh J. Minkler, United States Attorney for the Southern District of Indiana, Tiffany J. Preston and Nicholas Linder, Assistant United States Attorneys (“the Government”), hereby files its Motions *in Limine* in preparation for the December 11, 2017 trial.

Background

Until his arrest, defendant Franklin Fennell (“defendant” or “Fennell”) was the Facilities Director for the Vigo County School Corporation (“VCSC.”) As part of his duties as the Facilities Director for the VCSC, Fennell was responsible for the proper maintenance and servicing of all VCSC locations and facilities; to include the schools. In carrying out his duties, Fennell routinely submitted, or caused to be submitted, requisitions to the VCSC Business Office, which in turn, created Purchase Orders which were sent to selected vendors authorizing the vendor to complete work. After the work was complete, the Business Office used VCSC funds to pay the vendor for services/supplies rendered.

Until he was placed on Administrative Leave as a result of his November 2, 2016, arrest, Frank Shahadey was a sworn deputy with the VCSD who was assigned to as a School Security Officer. Business A, owned by Individual A, was a vendor for the VCSC. Business A performed numerous duties for the VCSC; to include tree trimming and tree and stump removal.

For at least two years, Shahadey and Fennell demanded and accepted kickbacks from Business A resulting in at least \$80,500 in inflated costs to the school. Beginning in early 2014, and continuing until or about October 2016, Individual A, at Fennell and Shahadey's direction, submitted inflated or false estimates and invoices for work at VCSC locations to Fennell. Fennell then awarded the work contract on VCSC'S behalf to Business A. When the work was completed (and in some cases, no work was completed), Fennell submitted the inflated invoice to the VCSC Business Office. The VCSC Business Office then mailed payment taken from VCSC funds to Business A. When Business A received payment from the VCSC, Individual A deposited the check, withdrew cash, and provided cash payments to Fennell and Shahadey.

On November 1, 2016, Fennell and Shahadey were charged by criminal complaint. On December 14, 2016, the grand jury indicted Fennell and Shahadey on 9 counts of wire fraud, in violation of Title 18, United States Code, Section 1343, one count of Theft of Government Funds, under Title 18, United States Code, Section 666, and charged Fennell alone with two counts of making materially false statements to agents of the Federal Bureau of Investigation, under Title 18, United

States Code, Section 1001. The Jury Trial in this matter is scheduled to begin on December 11, 2017, at 9:00 a.m.

I. Government Exhibits and Evidence

A. Summary Charts

The government intends to introduce several demonstrative charts summarizing relevant information distilled from voluminous writings and analyzed over the course of a lengthy investigation, namely, 1) records from the VCSC and Business A, including purchase orders, requests for proposals, and invoices; 2) records from cellular telephone companies including call and location data; and 3) bank records including wiring information. Federal Rule of Evidence 1006 provides that “[t]he contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary or calculation.” See *United States v. Petty*, 132 F.3d 373, 379 (7th Cir. 1997). The information included on the chart must be based on matters that have been properly introduced into evidence. *United States v. Brown*, 136 F.3d 1176, 1182 (7th Cir. 1998). The basic purpose is to recapitulate numerous and voluminous exhibits that have been admitted into evidence. *United States v. Stoecker*, 215 F.3d 788, 792 (7th Cir. 2000). The Rule does not require literal impossibility to examine the underlying books and records – it need only be “inconvenient.” *United States v. Briscoe*, 896 F.2d 1476, 1495 (7th Cir. 1990).

The Seventh Circuit has approved the use of such charts where the government witnesses who prepared them are available for cross-examination and the jury is