

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS 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 SANTIAGO PROFFER**

The United States of America, by and through its undersigned counsel, hereby submits the following proffer pursuant to *United States v. Santiago*, 582 F.2d 1128 (7th Cir. 1978), in support of the admissibility of co-conspirator statements under the Federal Rule of Evidence 801(d)(2)(E).

**I. Background**

**A. The Charges**

The Indictment alleges that the Defendant perpetrated a fraudulent scheme to exploit his position as Facilities Director of the Vigo County School Corporation (“VCSC”) for his and his co-conspirators’ personal financial gain. The Indictment alleges that the Defendant and Frank Shahadey, a sworn deputy with the Vigo County Sheriff’s Department working in VCSC School Security, instructed a third-party vendor of outdoor maintenance services to submit artificially inflated invoices for work performed (or not performed, as the case may be) at VCSC schools. The Defendant then used his authority as Facilities Director to approve these inflated invoices, causing them to be paid using VCSC funds – with the intent to divert the inflated portions back to the Defendant and his co-conspirators.

The Indictment contains three types of charges. First, the Indictment alleges nine counts of wire fraud, in violation of 18 U.S.C. §§ 1343 and 2, which represent nine payments of falsely inflated invoices (among many others) that occurred as a result of the scheme to defraud described above. Second, the Indictment alleges one count of theft from a program receiving federal funds, because the victim of the above-described scheme is the VCSC, which receives more than \$10,000 annually from the U.S. Department of Education, in violation of 18 U.S.C. §§ 666 and 2. Finally, the Indictment alleges two counts of the Defendant having made false statements to agents of the Federal Bureau of Investigation, in violation of 18 U.S.C. § 1001, when the Defendant flatly, but falsely, denied receiving anything of value from any third-party vendor doing business with the VCSC, including the vendor identified in the Indictment, referred to as “Business A.”

**B. Summary of the Evidence at Trial**

Although the Defendant is not charged with a conspiracy count, the government’s evidence at trial will establish that the Defendant did in fact conspire with Shahadey and Individual A, the owner of Business A, to carry out the scheme to defraud VCSC alleged in the Indictment. The evidence will show that beginning in early 2014, the Defendant, Shahadey, and Individual A used the Defendant’s authority as Facilities Director to cause VCSC to pay inflated invoices to Business A for the purpose of funneling the inflated portion back to the Defendant, to Shahadey, and occasionally to Individual A, typically in cash. The evidence will show that the conspiracy among all three men lasted for over two years, until Individual A began cooperating with federal investigators began shortly after search warrants were executed at VCSC locations. Despite the search warrants, however, the conspiracy among the Defendant and Shahadey continued until early November 2016, when the Defendant and Shahadey were arrested.

The evidence will describe the Defendant's authority as VCSC Facilities Director to select and authorize payments to vendors for performing maintenance work at VCSC schools, as well as the process for doing so. Specifically, VCSC employees will testify, and documents will show, that the Facilities Director was responsible for soliciting bids from vendors for maintenance work at schools, choosing the vendor to perform the work, negotiating the price charged, and ultimately signing off on the vendor's invoice, once work was completed, to authorize a VCSC check to be cut to the vendor. Employees will thus testify that the Defendant's approval of Business A's invoices, which typically involved the Defendant's signature on a VCSC document called a "purchase order," constituted the Defendant's affirmation that the work was done properly and for a fair price, negotiated at arm's length. Accordingly, a purchase order with the Defendant's signature on it caused VCSC to cut a check to Business A for the amount of the invoice the Defendant had approved.

Individual A will testify that in early 2014, the Defendant approached him about submitting inflated invoices for outdoor maintenance work like trimming trees and removing shrubs and kicking the inflated portion back to him and Shahadey. At the same time, other VCSC Facilities Department employees will testify that, historically, the responsibility for outdoor maintenance work fell to them – until early 2014 when the Defendant instructed them that he had selected a vendor who would be doing that kind of work. The evidence will show that, for the next two years, Individual A, at the Defendant's and Shahadey's direction, submitted inflated invoices to VCSC for a variety of outdoor maintenance work and then kicked the inflated portion back to the Defendant and Shahadey (and sometimes himself) in cash. The evidence will show that the Defendant, and later Shahadey, told Individual A what price to charge for Business A's work. Often, they instructed Individual A to overcharge VCSC by \$1,000 – allowing \$500 for each of