

U. S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FILED 8-31-11
LORETTA G. WHYTE
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

* CRIMINAL DOCKET NO.: 10-328

VERSUS

* SECTION: "L"

DAVID
~~SEAN DAVID~~ ALFORTISH

* VIOLATION: 18 U.S.C. § 371

* * *

DAVID
FACTUAL BASIS

The Defendant, ~~SEAN DAVID~~ ALFORTISH ("defendant") has agreed to plead guilty to Count 1 of the Indictment in the above-captioned case charging him with one count of conspiracy to commit mail fraud [in violation of Title 18, United States Code, Section 1341], to commit wire fraud [in violation of Title 18, United States Code, Section 1343], to commit fraud in connection with identification documents [in violation of Title 18, United States Code, Section 1028(a)(7); Section 1028 (c)(3)(B), and Section 1028(b)(2)(B)], and health care fraud [in violation of 1347], all in violation of 18 U.S.C. § 371. Should this matter have gone to trial, the Government would have proven, through the introduction of competent testimony and admissible, tangible exhibits, the following facts, beyond a reasonable doubt, to support the allegations in Count One of the Indictment now pending against defendant

The defendant was first elected as the president of the Louisiana Horsemen's Benevolent and Protective Association 1993, Inc. ("HBPA" or "Association") in 2005, and served in that

capacity at least until the return of the Indictment on November 18, 2010. He also was a licensed Louisiana attorney who operated a private legal practice and served as a magistrate judge.

The HBPA is a Louisiana non-profit corporation which was recognized by Louisiana law as the representative of horsemen racing at licensed races held in the State of Louisiana. A horseman was a race horse owner or trainer and was eligible for membership in the HBPA once his race horse started in one qualifying race in Louisiana.

HBPA members were entitled to vote for officers and directors of the HBPA. The bylaws of the HBPA required that in order for a ballot to be counted as valid, it had to be enclosed in a ballot enclosure envelope bearing the Social Security number of an HBPA member and the ballot had to be received by the HBPA's certified public accountants via the U.S. Postal Service.

Defendant was re-elected to a second term as president of the HBPA after an election in which ballots were counted on March 31, 2008 ("the March 2008 election").

During ALFORTISH'S first term of office from April 2005 until March 2008, certain members of the board of directors of the HBPA challenged defendant's management of the finances of the organization. In early 2008, one member of the board of directors sued the Association and Alfortish to require that information about the organization's finances be produced.

Defendant and other co-conspirators entered into a conspiracy to rig the outcome of the March 2008 election. The object of the conspiracy was to re-elect defendant along with favored candidates for directors. The methods the conspiracy was accomplishing included the following: mailing falsified election ballots through the U.S. Postal Service from states other than Louisiana so they would bear postmarks appropriate to the residences of the supposed "voters," using

interstate wires to make airline reservations for the co-conspirators' travel and electronic transfers of funds from a bank account to pay for the co-conspirators airline tickets; and knowingly transferring, possessing and using, without lawful authority, a means of identification of another person, that is, a Social Security number, with the intent to commit, and in connection with, unlawful activity that constitutes a violation of Federal law, namely, mail fraud in violation of Title 18, United States Code, Section 1341, and to cause the Social Security number to be transported in the mail in the course of the use prohibited by law, in violation of Title 18, United States Code, Section 1028(a)(7); Section 1028 (c)(3)(B), and Section 1028(b)(2)(B).

The defendant directed Mona Romero and another individual to identify persons who were eligible to vote in the election but who were not expected to vote because they had started a horse in only one race during the period considered in determining eligibility to vote. Many such persons identified as likely non-voters lived outside the State of Louisiana.

Defendant then instructed Mona Romero and another individual to travel to Lake Charles, Louisiana, and stay at a casino resort and spa while falsifying election ballots. The costs of such travel were charged to HBPA credit card accounts and the credit card bill was paid out of the Medical Benefit Trust Administrative Account. Mona Romero and another individual falsified election ballots by marking them for defendant as president and the favored candidates as members of the board of directors. They then marked on the ballot enclosure envelopes the Social Security numbers of likely non-voters, without the knowledge and permission of those likely non-voters. Finally, they inserted the falsified election ballots and ballot enclosure envelopes into an outer business reply envelope addressed to the certified public accountants who would open and tally the votes. They completed numerous falsified documents at the same time

with one or more ballots and ballot enclosure envelopes on top of each other, assembly-line fashion. While the ballots were being falsified, defendant was in frequent telephone contact with Mona Romero, Cindy Romero and two other individuals and discussed the progress of the ballot falsification process.

On or about March 19, 2008, with the defendant's knowledge and approval, Mona Romero gave Cindy Romero her personal bank card to withdraw funds from a personal bank account. Those funds were used to make airline reservations for three persons to fly to various cities where the likely non-voters lived. When the co-conspirators reached their destination, they dropped falsified election ballots and ballot enclosure envelopes into various mail boxes for delivery to certified public accountants who would open and count the ballots for the March 2008 election. Defendant later reimbursed Mona Romero whose bank card had been used for the cost of the airline tickets.

On March 21, 2008, Cindy Romero flew from New Orleans, Louisiana to Cincinnati, Ohio; Louisville, Kentucky; Atlanta, Georgia and then back to New Orleans, all on the same day. During that trip, Cindy Romero mailed falsified ballots and falsified ballot enclosure envelopes, which bore the Social Security numbers of individuals placed on the ballot enclosure envelopes without lawful authority of the persons to whom the Social Security numbers had been issued in Cincinnati, Ohio and Louisville, Kentucky. Cindy Romero also caused falsified ballots to be mailed from Lexington, Kentucky.

On March 21, 2008, another co-conspirator, at the express direction of defendant, flew from New Orleans, Louisiana to Houston, Texas, and then back to New Orleans, all on the same day. During that trip, the co-conspirator mailed falsified ballots and falsified ballot enclosure

envelopes which bore the Social Security numbers of individuals placed on the ballot enclosure envelopes without lawful authority of the persons to whom the Social Security numbers had been issued.

On March 21, 2008, a co-conspirator flew from New Orleans, Louisiana to Tampa, Florida, and then back to New Orleans, all on the same day. During that trip, the co-conspirator mailed falsified ballots and falsified ballot enclosure envelopes which bore the Social Security numbers of individuals placed on the ballot enclosure envelopes without lawful authority of the persons to whom the Social Security numbers had been issued.

On March 22, 2008, Mona Romero flew from New Orleans, Louisiana to Dallas, Texas, and back to New Orleans, Louisiana, all on the same day. During that trip, the co-conspirator mailed falsified ballots and falsified ballot enclosure envelopes which bore the Social Security numbers of individuals placed on the ballot enclosure envelopes without lawful authority of the persons to whom the Social Security numbers had been issued.

The evidence would show that the vast majority of ballots received and counted in the 2008 HBPA election which bore postmarks from Cincinnati, Ohio; Louisville and Lexington, Kentucky; Houston, Texas; Tampa, Florida; and Dallas, Texas, were postmarked on the dates the co-conspirators mailed falsified ballots or caused falsified ballots to be mailed from those cities and areas, or on the next mailing day.

During March 21 and 22, 2008, the period when falsified ballots were being mailed, evidence would be introduced to show the defendant frequently spoke with Mona Romero, Cindy Romero and other co-conspirators to discuss the progress of the ballot mailing efforts. At trial, HBPA members living near Cincinnati, Ohio; Louisville and Lexington, Kentucky; Dallas and

Houston, Texas; and Tampa, Florida, whose Social Security numbers appeared on ballot enclosure envelopes containing ballots counted in the March 2008 election would testify that he or she did not vote in the March 2008 HBPA election, that he or she did not authorize anyone else to vote for him or her, and that he or she has examined the ballot enclosure envelope bearing his or her Social Security number and that the handwriting on the ballot enclosure envelope is not his or hers.

Certified public accountants would testify that on March 31, 2008, they opened the election ballots and declared the winners of the election to be defendant as president and, as members of the board of directors, all candidates for the board who were selected by defendant and encouraged by him to run for positions on the board of directors. In contrast, all former members of the board of directors who stood for re-election and who had challenged defendant's management of the Association's finances during defendant's first term of office were not re-elected as board members.

Evidence in the form of emails, correspondence, lawsuits and hearings would be introduced to illustrate the efforts of the defendant to silence his detractors who believed his reelection was achieved through fraud. At board meetings where interested board members questioned ALFORTISH'S spending of funds, ALFORTISH falsely defended himself and sharply and, often publicly, criticized his detractors. The defendant presided over a hearing concerning a challenge to the election filed pursuant to the HBPA bylaws, knowing that he had participated and directed others to mail falsified ballots.

Prior to and subsequent to the date the defendant participated in the events outlined above, the defendant was employed by the HBPA as the director of workman's compensation

and director of simulcasting and earned a salary of \$100,000 per year for both positions. He also received a fringe benefit consisting of HBPA-paid health insurance for himself and his child. Such fully paid health insurance coverage was made available only to a limited number of executive-level employees of the HBPA. Records would show that the HBPA and the medical benefit trust significantly funded ALFORTISH's automobile gas, meals, and travel. This included international travel, personal gifts, and largess to HBPA employees.

Evidence would establish that in February 2007, the HBPA, ALFORTISH and Mona Romero were threatened with a lawsuit which involved an employee grievance. On March 13, 2007, the defendant settled that threatened litigation by paying \$25,000 of his personal funds to settle the matter. On April 27, 2007, the defendant was awarded with \$25,000.04 in "back pay" for job positions other individuals were performing.

Louisiana law would be judicially noticed that called for the creation and funding of a medical benefit trust on behalf of trainers and/or owners of horses in Louisiana. Witnesses familiar with Louisiana law and the operation of the HBPA would testify about how the legislatively mandated percentage, 4%, of wagering fees was supposed to flow to the HBPA for the exclusive use and benefit of horsemen, their employees, and others as medical and hospital benefits and that an amount not to exceed 30% of those funds could be used for administrative expenses and other costs necessary to provide the benefits. A medical trust agreement dated December 30, 1993, would be introduced into evidence which set forth that the trust was funded exclusively from statutorily dedicated funds and that under no circumstances should the trust provide benefits to any employee of the HBPA in their capacity as such. The Louisiana law and the medical benefit trust would establish that the HBPA Medical Benefit Trust was a health care

benefit plan as defined by Title 18, United States Code, Section 24(b).

Forensic examinations of the manner in which HBPA and medical benefit trust funds were spent would demonstrate that in 2005, when the defendant was first elected, until 2009, the expenses paid by the medical benefit trust on behalf of its operation and the affiliated operations of the HBPA more than doubled. Monthly expense allocation reports would demonstrate that the expenses of the HBPA and its affiliates were classified with accounting codes and, once totaled, were allocated to the HBPA and its affiliates. The affiliates were the medical benefit trust, a pension trust, a worker's compensation plan and a political action committee. The allocation assessments would show that a disproportionate share of the expenses were allocated to the medical benefit trust when, in truth and in fact, most of the expenses had nothing to do with the payment of claims of the administrative expenses incurred to pay those claims. In fact, the allocations to the medical benefit trust were a method of disguising the systematic diversion of the legislatively dedicated funds to the benefit of the defendant and his co-defendants.

Forensic examination and summary testimony would show that in 2005, expenses for flowers, gifts and awards, for instance, were \$1,452; by 2009 those expenses rose to \$8,274. Around 40% of that amount was allocated to the medical benefit trust when no amount of that sum had anything to do with the administering of medical claims. The same evidence would be introduced with respect to travel, meals and entertainment and gas. Further, credit card bills introduced into evidence would demonstrate that never did the defendant account for his spending. At board meetings where he and Mona Romero were questioned about their spending, Romero explained that she would account for her spending and never addressed the fact that **ALFORTISH** used the credit cards without limitation or accountability and his fraudulently

installed board members did not question his authority.

In January 2008, the HBPA put on a national convention for the HBPA's throughout the country. Over \$83,000 was spent to put on the convention and paid for by the medical benefit trust. The convention contained one hour of materials arguably dedicated to health care benefits. Under the defendant's leadership, roughly half of the expense of presenting the convention was allocated to the medical benefit trust.

Finally, evidence would establish that, because the defendant continually used medical benefit trust funds for personal and HBPA purposes, instead of depositing the legislatively mandated funds in an account to pay medical claims, the medical benefit plan reduced its coverage and made eligibility into the plan more rigorous.

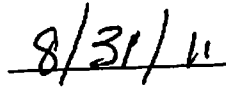
In summary, the evidence introduced by the Government at trial would prove, and the defendant concedes, that **SEAN DANIEL ALFORTISH** conspired to commit mail fraud, wire fraud and fraud in connection with identification documents, to wit, Social Security numbers, written on ballot envelopes containing falsified ballots to be cast in the March 2008 election of the Louisiana Horsemen's Benevolent and Protective Association, as well as health care fraud.



EILEEN GLEASON

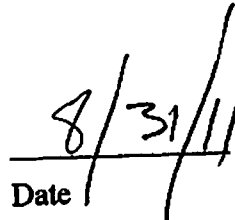
Assistant United States Attorney

District of Columbia Bar No. 980511



Date


G. DALL KAMMER


Date

Assistant United States Attorney

Louisiana Bar No. 26948



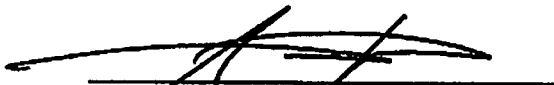
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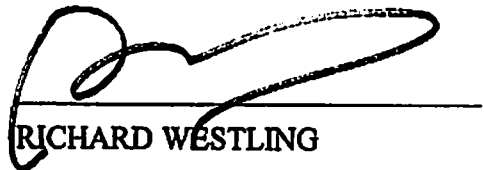


SEAN DANIEL ALFORTISH

Defendant

8/31/2011

Date



RICHARD WESTLING

Attorney for Sean Daniel Alfortish

Bar Roll No. 20027

8/31/2011

Date