

12-60001-CR-MARRA/HOPKINS
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____
18 U.S.C. § 1343

UNITED STATES OF AMERICA

vs.

DAVID MICHAEL MCELLIGOTT,

Defendant.

_____ /

INFORMATION

The United States Attorney charges:

GENERAL ALLEGATIONS

At all times material to this Information:

1. The defendant, **DAVID MICHAEL MCELLIGOTT**:
 - a. was employed by the City of Fort Lauderdale as a sworn police officer in the Fort Lauderdale Police Department, from on or about December 30, 1991, to on or about the date of this Information;
 - b. was on extended military leave from that employment, from on or about September 21, 2001, to on or about the date of this Information; and
 - c. was voluntarily on full time active duty in the United States Air Force Reserve, pursuant to Title 10, United States Code, Section 12301(d), from on

or about May 22, 2003, to on or about the date of this Information, serving at Robins Air Force Base, in the State of Georgia.

2. The Fort Lauderdale City Commission had in effect a "Policy to Supplement Military Pay of Employee Reservists Called to Active Duty as a Result of the Ongoing Military Conflicts Arising from the September 11, 2001 Terrorist Attacks" (hereinafter, "Supplemental Pay Policy"). Pursuant to the Supplemental Pay Policy, the City of Fort Lauderdale "supplement[ed] the military pay of its employee reservists called to active military service in an amount necessary to bring their total salary, inclusive of their base military pay, to the level earned at the time they were called to active military duty." In order to be eligible to receive the supplemental pay, the employee reservist was required to provide to the City of Fort Lauderdale proof of their military pay for the period for which the supplemental pay was requested.

3. The Uniformed Services Employment and Reemployment Rights Act, Title 38, United States Code, Sections 4301 - 4335 (hereinafter, "USERRA"), guarantees to an employee returning from military service the right to be reemployed at his or her former job, with the same benefits, subject to rules and exceptions contained therein. Pursuant to the USERRA, at Section 4312(a)(2), such reemployment rights apply only if the cumulative length of military service that causes a person's absences from their job does not exceed five years. However, pursuant to the USERRA at Section 4312(c)(4)(A), periods of military service that are involuntary, where the person is "ordered to or retained on active duty under section ... 12302 ... of title 10 " of the United States Code, are not included when calculating the cumulative years of military service.

COUNT 1

4. Paragraphs 1 through 3 of the General Allegations are incorporated by reference as though realleged in their entirety herein.

5. From on or about September 15, 2003, to on or about October 15, 2011, at Broward County, in the Southern District of Florida, and elsewhere, the defendant,

DAVID MICHAEL MCELLIGOTT,

did knowingly devise and intend to devise a scheme and artifice to defraud the Fort Lauderdale Police Department and the City of Fort Lauderdale, and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, and the defendant knowingly transmitted or caused to be transmitted by means of wire communication in interstate commerce some writings, signs, signals, pictures and sounds for the purpose of executing the scheme.

OBJECTIVE OF THE SCHEME AND ARTIFICE

6. It was the objective of the scheme and artifice to defraud for the defendant to enrich himself unjustly by presenting fabricated, falsified and altered Military Leave and Earnings Statements and military orders to the Fort Lauderdale Police Department and City of Fort Lauderdale, in order to increase the supplemental pay and benefits paid to him as a City of Fort Lauderdale employee pursuant to the City of Fort Lauderdale's Supplemental Pay Policy, and to falsely assert his entitlement to extend his rights under USERRA beyond five years of cumulative military service.

MANNER AND MEANS OF THE SCHEME

The manner and means by which **DAVID MICHAEL MCELLIGOTT** sought to accomplish the objective of the scheme involved the following:

7. The defendant, **DAVID MICHAEL MCELLIGOTT**, made materially, false, misleading and fraudulent claims to the Fort Lauderdale Police Department and the City of Fort Lauderdale, in that he:

- a. fabricated, falsified and altered the Military Leave and Earnings Statements he received from the United States Defense Finance and Accounting Service, so that his total military pay appeared to be lower than it actually was; and
- b. fabricated, falsified and altered the military orders he received from the Department of the Air Force, so that his extended active duty appeared to be on an involuntary basis (pursuant to Title 10, United States Code, Section 12302), rather than on a voluntary basis (pursuant to Title 10, United States Code, Section 12301(d)); and

presented such fabricated, falsified and altered Military Leave and Earnings Statements and military orders to the Fort Lauderdale Police Department and the City of Fort Lauderdale as though they were true and accurate.


USE OF WIRE COMMUNICATIONS

8. On or about March 2, 2010, at Broward County, in the Southern District of Florida, and elsewhere, the defendant, **DAVID MICHAEL MCELLIGOTT**, did knowingly transmit and cause to be transmitted by means of wire communications in interstate commerce, certain writings, signs, signals and pictures, that is an electronic mail transmission sent from Robins Air Force Base,

in Georgia, using the defendant's Air Force Reserve Command e-mail address, to the electronic e-mail address of "D.H." in the Fort Lauderdale, Florida, Police Department payroll department.

All in violation of Title 18, United States Code, Section 1343.


WIFREDO A. FERRER
UNITED STATES ATTORNEY


RICHARD P. MURAD
ASSISTANT UNITED STATES ATTORNEY