UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SENNECCA McELWEE and
LASHINA HAYES,

Defendants.
_____/

No. 1:07-CR-273

Hon. Robert Holmes Bell
Chief United States District Judge

SUPERSEDING
INDICTMENT

The Grand Jury charges:

COUNT 1
(Conspiracy to Obstruct Justice)

From on or about July 11, 2007, through November 14, 2007, in the Southern Division of the Western District of Michigan,

SENNECCA McELWEE
and
LASHINA HAYES

did conspire, confederate and agree with each other, and with Thomas A. Davis and other persons, both known and unknown to the grand jury, to commit crimes against the United States, to wit: to corruptly obstruct and impede the due administration of justice, and to corruptly influence the testimony of witnesses, in *United States v. Thomas A. Davis*, No. 1:07-CR-191, in the United States District Court for the Western District of Michigan, in violation of Title 18, United States Code, Sections 1503 and 1512.

Object of the Conspiracy

The principal object of the conspiracy was to thwart justice by unlawfully obstructing and impeding the investigation and prosecution of Thomas A. Davis for being a felon in possession of a firearm in the case of *United States v. Thomas A. Davis*, No. 1:07-CR-191.

Overt Acts

In order to effect the object of the conspiracy, the co-conspirators performed at least one of the following overt acts within the Western District of Michigan:

1. On or about July 11, 2007, defendant SENNECCA McELWEE and Thomas A. Davis returned a granite-colored Chevrolet Cobalt to the Enterprise rental car agency from which it had previously been rented, and exchanged it for a red Chrysler PT Cruiser. Defendant McELWEE and Thomas A. Davis made the exchange because they had learned that the Grand Rapids Police Department had received a report that Thomas A. Davis had been seen in the rented Cobalt waiving a handgun, and Thomas A. Davis wanted to avoid being arrested.

2. On or about July 11, 2007, Grand Rapids police officers and federal agents conducted a traffic stop of the red PT Cruiser, which was being driven by defendant McELWEE and in which Thomas A. Davis was riding as a front-seat passenger. During the initiation of the traffic stop, Thomas A. Davis failed to raise his hands, whereas all the other occupants immediately complied with the officers' orders to raise their hands, and he was observed bending forward and placing something under his seat. Thomas A. Davis was arrested after officers found a .380 caliber Bersa, Model Thunder 380, semiautomatic pistol and a small bag of marijuana under the front passenger seat. During an interview following his arrest, Thomas A. Davis was questioned by Federal Bureau of Investigation (FBI) Violent Crime-Fugitive Task Force Officer Harrell Smith and Grand Rapids

Police Department Detective Patrick Needham regarding his knowledge of the firearm and the bag of marijuana that were found under the front passenger seat in which he was sitting. During that interview, Thomas A. Davis admitted placing the bag of marijuana under the seat, after being confronted with the fact that the officers had observed him placing something under his seat, but denied knowledge of the firearm. Thomas A. Davis, a convicted felon, denied knowledge of the firearm, knowing the statement to be false, for the purpose of evading prosecution for being a felon in possession of a firearm.

3. On or about July 11, 2007, defendant McELWEE was interviewed, following his arrest, by FBI Task Force Officer Harrell Smith and Detective Patrick Needham regarding his knowledge of the firearm and the bag of marijuana that were found under the front passenger seat in which Thomas A. Davis was sitting at the time of the traffic stop. During that interview, defendant McELWEE knowingly provided false information, to the effect that he had no knowledge of a firearm or marijuana being in the vehicle, despite the fact that he knew that the firearm and the bag of marijuana had been placed in the vehicle by Thomas A. Davis. Defendant McElwee provided this false information in order to assist Thomas A. Davis in evading prosecution for being a felon in possession of a firearm.

4. Sometime between on or about July 11, 2007, and on or about July 13, 2007, defendant LASHINA HAYES, Thomas A. Davis' girlfriend and the mother of his child, visited Thomas A. Davis at the Kent County jail, during which visit Thomas A. Davis directed defendant HAYES to contact a witness, Christopher Jeffries, for the purpose of convincing Mr. Jeffries to falsely claim that he, and not Thomas A. Davis, possessed the firearm for which Thomas A. Davis had been charged in *United States v. Thomas A. Davis*, No. 1:07-CR-191.

5. On or about July 13, 2007, defendant HAYES telephonically contacted Mr. Jeffries, as previously instructed by Thomas A. Davis, for the purpose of attempting to convince Mr. Jeffries to falsely claim that he, and not Thomas A. Davis, possessed the firearm for which Thomas A. Davis had been charged in *United States v. Thomas A. Davis*, No. 1:07-CR-191.

6. On or about July 13, 2007, defendant HAYES drove her vehicle to the neighborhood in which Mr. Jeffries lived, and, at the direction of Thomas A. Davis, defendant HAYES convinced Mr. Jeffries to go with her to speak with Thomas A. Davis' attorney. During the drive to downtown Grand Rapids, defendant HAYES told Mr. Jeffries that Thomas A. Davis was facing a significant prison sentence, and that he needed someone to "take the gun" for him. Mr. Jeffries did not agree to do this.

7. On or about July 15, 2007, Thomas A. Davis communicated by telephone with defendant HAYES from the Newaygo County jail, and he directed her to bring a witness, Mr. Jeffries, to the preliminary hearing in *United States v. Thomas A. Davis*, No. 1:07-CR-191, and to convince Mr. Jeffries to testify that the firearm for which Thomas A. Davis had been charged was his own, despite Thomas A. Davis' knowledge that this testimony would be untrue.

8. On or about July 16, 2007, Thomas A. Davis communicated by telephone with defendant HAYES from the Newaygo County jail, and he directed her to convince a witness, Mr. Jeffries, to sign an affidavit to the effect that the firearm for which Thomas A. Davis had been charged belonged to Mr. Jeffries, despite Thomas A. Davis' knowledge that this testimony would be untrue.

9. On or about July 20, 2007, Thomas A. Davis communicated by telephone with defendant HAYES from the Newaygo County jail. During that telephone conversation, defendant

HAYES advised Thomas A. Davis that she learned that Mr. Jeffries would not testify that the firearm in question was his. In response to this information, Thomas A. Davis directed defendant HAYES to convince Mr. Jeffries to change his mind. In furtherance of that end, Thomas A. Davis suggested that defendant HAYES tell Mr. Jeffries he would not get into that much trouble if he claimed the firearm, despite the fact that Thomas A. Davis, and not Mr. Jeffries, actually possessed the firearm.

10. On or about August 7, 2007, defendant McELWEE knowingly provided false information to an FBI Special Agent, who had served defendant McELWEE with a grand jury subpoena in the matter of *United States v. Thomas A. Davis*, regarding who possessed the firearm in question, for the purpose of obstructing and impeding the grand jury investigation.

11. On or about August 8, 2007, defendant McELWEE appeared as a witness before the grand jury, which was conducting an investigation of Thomas A. Davis' unlawful possession of a firearm on July 11, 2007. During that appearance, and while under oath, defendant McELWEE provided false and perjurious testimony regarding who possessed the firearm in question, for the purpose of obstructing and impeding the grand jury investigation.

12. On or about August 12, 2007, Thomas A. Davis communicated by telephone with defendant HAYES from the Newaygo County jail. During that telephone conversation, defendant HAYES surreptitiously set up a three-way telephone conversation with defendant McELWEE, to allow Thomas A. Davis to talk directly with defendant McELWEE. All inmates of the Newaygo County Jail are advised that three-way telephone conversations are expressly prohibited by the Jail authorities. During that telephone conversation, Thomas A. Davis and defendant McELWEE discussed their previous respective statements to the police; defendant McELWEE advised Thomas

A. Davis as to his (McELWEE's) testimony before the grand jury; and defendant McELWEE advised Thomas A. Davis of the identities of other witnesses he believed testified before the grand jury, all of which was designed to assist Thomas A. Davis in obstructing the prosecution of the government's case against him in *United States v. Thomas A. Davis*.

13. On or about August 16, 2007, Thomas A. Davis communicated by telephone with defendant HAYES from the Newaygo County jail. During that telephone conversation, defendant HAYES provided Thomas A. Davis with defendant McELWEE's telephone number, in response to Thomas A. Davis' request, so that he could contact McELWEE directly.

14. On or about September 25, 2007, defendant HAYES appeared as a witness before the grand jury, which was investigating the July 2, 2007, shooting incident at the Brick House Bar in downtown Grand Rapids. During that appearance, and while under oath, defendant HAYES provided false and perjurious testimony to the effect that Mr. Jeffries admitted to her that he possessed the firearm for which Thomas A. Davis had been charged in *United States v. Thomas A. Davis*, despite the fact that defendant HAYES knew that testimony to be false.

15. On or about November 14, 2007, defendant McELWEE, while a witness for the defense and while under oath, knowingly and intentionally provided false and perjurious testimony during the jury trial of *United States v. Thomas A. Davis*, to the effect that the firearm in question was possessed by Mr. Jeffries and another government witness, Orlando Douglas, despite the fact that defendant McELWEE knew Thomas A. Davis possessed the firearm.

16. On or about November 14, 2007, defendant HAYES, while a witness for the defense and while under oath, knowingly and intentionally provided false and perjurious testimony during the jury trial of *United States v. Thomas A. Davis*. Having failed to convince Mr. Jeffries to take the blame for Thomas A. Davis' firearm, defendant HAYES testified that Mr. Jeffries and another government witness, Orlando Douglas, admitted to her that they had possessed the firearm in question, despite the fact that defendant HAYES knew that they had made no such admissions.

18 U.S.C. § 371
18 U.S.C. § 1503
18 U.S.C. § 1512

COUNT 2
(Making Materially False Statements)

On or about July 11, 2007, in Kent County, in the Southern Division of the Western District of Michigan,

SENNECCA McELWEE,

in a matter within the jurisdiction of the Federal Bureau of Investigation, an agency of the United States, knowingly and willfully made materially false and fictitious statements, in that he told FBI Violent Crime-Fugitive Task Force Officer Harrell Smith and Grand Rapids Police Department Detective Patrick Needham that he had no knowledge of a pistol and marijuana found in a red Chrysler PT Cruiser he was driving earlier on that date, and which was the subject of a traffic stop and search by the Grand Rapids Police Department, when, in fact, he knew that a pistol and marijuana were in the vehicle at the time the traffic stop was initiated.

18 U.S.C. § 1001(a)(2)

COUNT 3
(Perjury)

On or about November 14, 2007, in Kent County, in the Southern Division of the Western District of Michigan,

SENNECCA McELWEE,

while under oath and testifying in a jury trial in the United States District Court for the Western District of Michigan, did knowingly make false material declarations, in that:

1. At the time and place aforesaid, the District Court was conducting a jury trial in the matter of *United States v. Thomas A. Davis*, No. 1:07-CR-191, in which Thomas A. Davis was charged with being a felon in possession of a firearm, a .380 caliber Bersa, Model Thunder 380, semiautomatic pistol that was found during a traffic stop and subsequent search of a red Chrysler PT Cruiser SENNECCA McELWEE was driving on or about July 11, 2007. It was material to the issues in said trial whether Thomas A. Davis possessed the pistol at the time of the traffic stop.

2. At the time and place alleged, SENNECCA McELWEE, appearing as a witness under oath for the defense in the aforementioned trial, knowingly made the following declarations in response to questions with respect to the matter alleged, specifically relating to whether the passengers in the back seat of the PT Cruiser were passing the pistol back and forth at the time of the traffic stop, as follows:

A. "And we get on Madison and 28th, we're at the stoplight, and it's just a whole bunch of police. So we waited and the light turns green. As soon as we pass – get underneath the light, past the light, cars, police jump in front of me. So I pull over, and about the same time all of that happened, I heard

Juice – I seen Juice and I heard Juice raise up, and he was like, 'Here, take this.'"

Q. "What do you mean, raise up?"

A. "As if he were getting something like this, you know. And then that's when he said, 'Here, take this.'"

Q. "And who did he say that to?"

A. "He said that to Creole. And Creole said, 'Hold on,' and Juice was like – in like an urgency manner like, you know, 'Take this,' and Juice was like, 'All right, give it here.' And I'd say about five seconds later I heard a clunk."

Q. "Did you see anything? Did you observe anything?"

A. "Like I said, I seen Juice raise up, say, 'Here, take this.' The second time he said take it, Creole said, 'Come on.' I seen Creole make some type of gesture. I seen the movement, and then after that I heard the clunk."

. . .

Q. "Okay. Your testimony today is that you heard Creole and Orlando Douglas talk about passing the gun back and forth; is that correct?"

A. "Um-hum, yep."

3. The aforesaid testimony of SENNECCA McELWEE, as he then and there well knew and believed, was false in that he knew the passengers in the back seat of the PT Cruiser, to whom he referred as "Juice" and "Creole," did not handle the pistol at the time of the traffic stop, but, rather, had their hands in the air.

18 U.S.C. § 1623

COUNT 4
(Perjury)

On or about November 14, 2007, in Kent County, in the Southern Division of the Western District of Michigan,

LASHINA HAYES,

while under oath and testifying in a jury trial in the United States District Court for the Western District of Michigan, did knowingly make false material declarations, in that:

1. At the time and place aforesaid, the District Court was conducting a jury trial in the matter of *United States v. Thomas A. Davis*, No. 1:07-CR-191, in which Thomas A. Davis was charged with being a felon in possession of a firearm, a .380 caliber Bersa, Model Thunder 380, semiautomatic pistol that was found during a traffic stop and subsequent search of a red Chrysler PT Cruiser Sennecca McElwee was driving on or about July 11, 2007. It was material to the issues in said trial whether Thomas A. Davis possessed the pistol at the time of the traffic stop.

2. At the time and place alleged, LASHINA HAYES, appearing as a witness under oath for the defense in the aforementioned trial, knowingly made the following declarations in response to questions with respect to the matter alleged, specifically relating to whether Christopher Jeffries, one of the passengers in the back seat of the PT Cruiser, previously made statements to the effect that he was in possession of the .380 caliber Bersa, Model Thunder 380, semiautomatic pistol on July 11, 2007, and that the pistol in question did not belong to Thomas A. Davis, as follows:

Q. "Ms. Hayes, can you tell the jury what Mr. Christopher Jeffries, also known as Creole, said to you?"

A. "He said that – I asked him what happened, and he was like they picked him and – Sennecca and Thomas picked up Creole and Juicy somewhere on 28th

> Street and that they got pulled over, and I'm like, 'So who gun was it?' He was like, 'It was mine, but it wasn't mine. I was holding it down for somebody else.' I'm like, 'Was it Thomas' gun?' He like, 'No, but it wasn't my gun either.' So I was like, 'Okay.' And I asked him is that what he was gonna tell the police when we went to the police station, and he said, 'Yeah.'"

3. The aforesaid testimony of LASHINA HAYES, as she then and there well knew and believed, was false.

18 U.S.C. § 1623

COUNT 5
(Perjury)

On or about November 14, 2007, in Kent County, in the Southern Division of the Western District of Michigan,

LASHINA HAYES,

while under oath and testifying in a jury trial in the United States District Court for the Western District of Michigan, did knowingly make false material declarations, in that:

1. At the time and place aforesaid, the District Court was conducting a jury trial in the matter of *United States v. Thomas A. Davis*, No. 1:07-CR-191, in which Thomas A. Davis was charged with being a felon in possession of a firearm, a .380 caliber Bersa, Model Thunder 380, semiautomatic pistol that was found during a traffic stop and subsequent search of a red Chrysler PT Cruiser Sennecca McElwee was driving on or about July 11, 2007. It was material to the issues in said trial whether Thomas A. Davis possessed the pistol at the time of the traffic stop.

2. At the time and place alleged, LASHINA HAYES, appearing as a witness under oath for the defense in the aforementioned trial, knowingly made the following declarations in response to questions with respect to the matter alleged, specifically relating to whether Orlando Douglas, one of the passengers in the back seat of the PT Cruiser, previously made statements to the effect that he and Christopher Jeffries were in possession of the .380 caliber Bersa, Model Thunder 380, semiautomatic pistol on July 11, 2007, as follows:

Q. "Ma'am, you had a conversation with Orlando Douglas?"

A. "Yes."

Q. "And what is it . . . that he said to you?"

A. "He said that the gun was Creole's and when they got pulled over, Creole had the gun in his lap, flipped it off his T-shirt, like, 'You take it.' Juicy was like, 'No, you take it.' Creole wiped the gun down and dropped the gun on the floor and kicked it under the seat."

3. The aforesaid testimony of LASHINA HAYES, as she then and there well knew and believed, was false.

18 U.S.C. § 1623

A TRUE BILL

_____
GRAND JURY FOREPERSON

CHARLES R. GROSS
United States Attorney

_____
PHILLIP J. GREEN

_____
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