

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. <u>10-82</u>
v.	:	DATE FILED: <u>September 27, 2011</u>
DAVID F. KANE	:	VIOLATIONS:
	:	18 U.S.C. § 371 (conspiracy - 1 count)
	:	26 U.S.C. § 7206(1) (filing a false income tax return - 1 count)
	:	26 U.S.C. § 7203 (failure to file income tax returns - 3 counts)
	:	26 U.S.C. § 7201 (tax evasion - 1 count)
	:	18 U.S.C. § 1014 (false statement to obtain a loan - 1 count)
	:	18 U.S.C. § 1344 (bank fraud - 1 count)
	:	18 U.S.C. § 1341 (mail fraud - 1 count)
	:	18 U.S.C. § 2 (aiding and abetting)
	:	Notice of forfeiture

THIRD SUPERSEDING INDICTMENT

COUNT ONE

At all times relevant to this third superseding indictment:

1. Defendant DAVID F. KANE owned and operated a real estate development business in Montgomery County, Pennsylvania, called Kane Core, Inc. (“KCI”). Also, between approximately January 2006 and May 2008, defendant KANE was employed as the elected Chairman of the Limerick Township Board of Supervisors, which was the legislative body that governed Limerick Township, Pennsylvania. As a member of the Board of Supervisors, defendant KANE voted on various matters, including increases in township taxes and fees and approval for the development of real estate. Prior to establishing KCI, defendant KANE owned and operated Kane Construction. Except for a federal tax return filed for 2004, between at least 1999 and the date of this superseding indictment, defendant KANE did not file a

timely personal federal income tax return or pay federal income taxes due.

2. Mark Marino, charged elsewhere, was defendant DAVID F. KANE's business partner in KCI and an elected member of the Skippack Township Board of Supervisors. Marino also owned and operated other various businesses, including a landscaping business, Marino Landscape and Design, and Marino Holdings, Inc.

3. Jamie E.E. Baugher, charged elsewhere, was employed by defendant DAVID F. KANE and Mark Marino at KCI. His duties at KCI included finding real estate for development and property owners needing assistance in obtaining approval for development. At the direction of defendant DAVID F. KANE, Baugher established Jascu, LLC, which Baugher used for the purpose of receiving funds from KCI and evading federal taxes on payments to him from KCI.

4. John D. Kane, charged elsewhere, was defendant DAVID F. KANE's brother and assisted defendant KANE in concealing defendant KANE'S assets from the Internal Revenue Service ("IRS"). Among other things, John D. Kane agreed to title KCI and defendant KANE's residences in his name to prevent the IRS from seizing them in payment of past-due federal taxes, interest, and penalties owed by defendant KANE.

5. Gregory M. Kane, charged elsewhere, was defendant DAVID F. KANE's father. He was employed by defendant KANE and Marino at KCI. His duties at KCI included locating real estate for development and property owners needing assistance in obtaining approval for development. At the direction of defendant KANE, Gregory M. Kane established Sunrise Enterprises, LLC, which Gregory M. Kane used for the purpose of receiving funds from KCI and evading federal taxes on payments to him from KCI.

THE CONSPIRACY

6. From at least in or about 2002 and continuing through on or about the date of this third superseding indictment, in the Eastern District of Pennsylvania and elsewhere, defendant

DAVID F. KANE

conspired and agreed, with Mark Marino, Jamie E.E. Baugher, John D. Kane, Gregory M. Kane, and others known and unknown to the grand jury, to defraud the United States by willfully impeding, impairing, obstructing, and defeating the lawful governmental functions of the IRS in the ascertainment, computation, assessment, and collection of revenue, that is, federal income taxes.

MANNER AND MEANS

It was part of the conspiracy that:

7. Defendant DAVID F. KANE did not timely file tax returns or pay federal taxes, interest, and penalties owed by him.

8. Although defendant DAVID F. KANE and Mark G. Marino owned and operated KCI, they falsely stated that KCI was owned by John D. Kane and arranged that KCI be titled in John D. Kane's name.

9. Defendant DAVID F. KANE also titled his residence in John D. Kane's name.

10. Defendant DAVID F. KANE and Mark G. Marino falsely stated that KCI employees were "independent contractors" and not subject to deductions for federal employment taxes.

11. At the direction of defendant DAVID F. KANE, Jamie E.E. Baugher, Gregory M. Kane, and S.H., a person known to the grand jury, set up corporations to use to receive income from KCI. Baugher and Gregory Kane used the corporations to conceal their KCI income from the IRS. Defendant KANE also set up Celtic Development, LLC, and Minister Creek, LLC, for the same purpose.

12. Defendant DAVID F. KANE and John D. Kane made false statements to various title agencies and lenders to conceal defendant KANE's assets from the IRS.

13. Defendant DAVID F. KANE and Mark Marino paid substantial personal expenses directly out of corporate funds and did not report these payments as income to the IRS. These included payments for housekeepers, a gentlemen's club, sports tickets, vacations, restaurant meals, and credit card bills.

14. Defendant DAVID F. KANE and Mark G. Marino diverted proceeds from KCI real estate transactions to personal bank accounts they controlled and then failed to report their earnings to the IRS.

OVERT ACTS

In furtherance of the conspiracy, defendant DAVID F. KANE, and Mark G. Marino, Jamie E.E. Baugher, John D. Kane, Gregory M. Kane, and others known and unknown to the grand jury, committed the following overt acts, among others, in the Eastern District of Pennsylvania and elsewhere:

1. In or about 2002, defendant DAVID F. KANE purchased a residence on Bragg Road in Schwencksville, Pennsylvania, and falsely titled it in the name of John D. Kane. John D. Kane took out a mortgage on the property. Defendant KANE and John D. Kane agreed

that defendant KANE would pay the mortgage by funneling payments to John D. Kane, who would then write a check to the mortgage company. John D. Kane failed to report the payments from defendant KANE on his tax returns, but took deductions for mortgage interest on those same returns. Some of the payments defendant DAVID F. KANE made to John Kane to pay the mortgage were from KCI funds.

2. In or about November 2002, defendant DAVID F. KANE and John D. Kane requested John D. Kane's long-time tax preparer to incorporate KCI in the name of John D. Kane because defendant KANE had not timely filed tax returns or paid federal taxes and feared the IRS would seize KCI or its assets to satisfy his tax obligations.

3. On or about November 25, 2002, defendant DAVID F. KANE and John D. Kane caused KCI to be incorporated in Pennsylvania.

4. On or about August 18, 2004, at the direction of defendant DAVID F. KANE, Gregory M. Kane caused Sunrise Enterprises, LLC, to be incorporated in Pennsylvania.

5. On or about August 18, 2004, defendant DAVID F. KANE caused Celtic Development, LLC, to be incorporated in Pennsylvania.

6. On or about February 26, 2004, defendant DAVID F. KANE and Mark G. Marino caused the proceeds of a KCI real estate transaction to be split among defendant KANE, Marino, and Gregory Kane. Each man deposited his share of the proceeds, a \$48,333 check drawn on KCI's Harleysville Bank account, to his own personal bank account. Marino and Gregory Kane failed to reported their receipt of the funds to the IRS as income for 2005, as required by law.

7. On or about December 3, 2004, defendant DAVID F. KANE and Mark G.

Marino caused a title agency responsible for distributing the proceeds of a KCI real estate transaction (“Kratz Road”) to make payments directly to defendant KANE and Marino in the amount of \$231,000. Defendant KANE deposited the payment to his personal account at Harleysville Bank, and Marino deposited the payment to his personal account at Merrill Lynch. Marino failed to reported his receipt of the funds to the IRS as income on his 2004 federal income tax return, as required by law.

8. On or about May 25, 2005, defendant DAVID F. KANE and Mark G. Marino caused a title agency responsible for distributing the proceeds of a KCI real estate transaction (the “Four Seasons Development”) to make payments to Jamie E.E. Baugher in the amount of \$24,000, and to Sunrise Enterprises, Gregory Kane’s company, in the amount of \$100,000. Neither Baugher nor Gregory Kane reported their receipt of these funds to the IRS as income during 2005, as required by law.

9. On or about June 9, 2005, defendant DAVID F. KANE filed a federal income tax return for the year 2004 which falsely stated that his adjusted gross income was \$82,295 and which failed to report his receipt of additional income, including \$231,000 from the Kratz Road transaction.

10. On numerous dates between on or about January 23, 2005, and on or about August 22, 2006, defendant DAVID F. KANE caused a total of approximately \$118,302 in proceeds of KCI real estate transactions to be transferred from the KCI Harleysville Bank account to his personal bank account at Harleysville National Bank, and failed to report his receipt of these proceeds as income to the IRS, as required by law.

11. On or about April 15, 2006, defendant DAVID F. KANE failed to file a

federal income tax return with the IRS for year 2005 and failed to report his receipt of KCI funds and other income he received during 2005.

12. In or about late May 2006, after the IRS had levied his long-time personal bank account at Harleysville National Bank and seized approximately \$8,263 from it, defendant DAVID F. KANE substantially stopped depositing funds to the account.

13. On or about July 7, 2006, the same day that the IRS filed at least one lien against him, defendant DAVID F. KANE opened a bank account in the name of his company, Celtic Development, LLC, at Commerce Bank.

14. On or about November 3, 2006, defendant DAVID F. KANE and Mark G. Marino caused KCI proceeds received from a third party (the Landis payments) to be paid to Celtic Development, defendant KANE'S company, in the amount of \$57,683, and to Sunrise Enterprises, Gregory Kane's company, in the amount of \$19,227. Gregory Kane did not report his receipt of the funds to the IRS as income during 2006, as required by law.

15. On or about March 28, 2007, defendant DAVID F. KANE and Mark G. Marino caused a title agency responsible for distributing the proceeds of a KCI real estate transaction (the "Hawthorne Subdivision") to make a number of payments for defendant KANE'S personal expenses directly out of the settlement proceeds. These payments included \$78,900 to pay off a line of credit defendant KANE used for personal expenses, \$50,000 which was deposited with another management company which defendant KANE later directed to be used to pay personal expenses, and \$18,000 paid to defendant KANE'S ex-wife as part of their divorce settlement. Defendant KANE and Marino also caused \$71,700 in proceeds from the Hawthorne Subdivision sale to be paid directly to Celtic Development, defendant KANE'S

company. Further, defendant KANE and Marino caused \$112,000 in proceeds from the Hawthorne Subdivision transaction to be paid to Jamie E.E. Baugher, and \$150,000 in proceeds from the same transaction to be paid to Sunrise Enterprises, Gregory Kane's company. Baugher and Gregory Kane did not report their receipt of the funds to the IRS as income during 2006, as required by law.

16. On or about April 15, 2007, defendant DAVID F. KANE failed to file a federal income tax return with the IRS for the year 2006 and failed to report his receipt of the Landis payments and other income he received during 2006.

17. On or about December 17, 2007, defendant DAVID F. KANE and Mark G. Marino caused a title agency responsible for distributing the proceeds of a KCI real estate transaction ("Swamp Picnic Road") to make payments for defendant KANE's personal expenses directly out of the settlement proceeds. These payments included \$25,000 to defendant KANE's ex-wife as part of their divorce settlement, \$37,881 which was later deposited with the management company and used to pay defendant KANE's personal expenses, and \$75,000 to pay off a line of credit which defendant KANE used for personal expenses. Defendant KANE and Marino also caused proceeds of the KCI real estate transaction to be paid directly to defendant KANE in the amounts of \$1,700 and \$9,000, which KANE deposited to his Celtic Development and Minister Creek bank accounts.

18. On or about April 15, 2008, defendant DAVID F. KANE failed to file a federal income tax return with the IRS for the year 2007 and failed to report his receipt of the Hawthorne Development and Swamp Picnic Road KCI payments and other income he received during 2007.

19. In or about July 2008, at the direction of defendant DAVID F. KANE, John D. Kane falsely told a title agent who was conducting the closing of the sale of defendant KANE's residence on Bragg Road in Schwenksville, Pennsylvania, that defendant KANE had no equitable interest in the residence. As a result of this false statement by defendant KANE and John D. Kane, the title agent issued a check for approximately \$150,000 representing the proceeds of the sale of defendant KANE's residence to John D. Kane, even though these funds should have been paid to the IRS to satisfy a portion of the \$601,310 IRS lien placed against KANE in 2006. John Kane deposited the check to his personal bank account at Bank of America. Between in or about July 2008 and on or about December 6, 2008, John Kane wrote a total of \$21,000 in checks from his personal account to defendant DAVID F. KANE'S Celtic Development company.

20. In or about October 2009, John D. Kane falsely told D.A.M., a witness before the federal grand jury investigating defendant DAVID F. KANE'S and other persons' conduct, that of defendant KANE's residence on Bragg Road was "his house."

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

On or about June 9, 2005, in the Eastern District of Pennsylvania, defendant

DAVID F. KANE

willfully made and subscribed a United States income tax return, Form 1040, for the calendar year 2004, which was verified by a written declaration that it was made under the penalty of perjury and filed with the Director, Internal Revenue Service Center, which defendant KANE did not believe to be true and correct as to every material matter, in that the return reported adjusted gross income of \$82,295, when in fact, as KANE knew, he had received additional taxable income of approximately \$370,638.

In violation of Title 26, United States Code, Section 7206(1).

COUNTS THREE THROUGH FIVE

THE GRAND JURY FURTHER CHARGES THAT:

1. During 2005 through 2007, defendant DAVID F. KANE received gross income from his employment with Kane Core, Inc., (“KCI”), in excess of the amounts requiring him to file an income tax return, those amounts being \$8,200 during 2005, \$8,450 during 2006, and \$8,750 during 2007.

2. During calendar years 2005 through 2007, as set forth below, in the Eastern District of Pennsylvania, defendant

DAVID F. KANE,

a resident of Schwencksville, Pennsylvania, had and received gross income substantially in excess of the minimum filing requirement, as set forth above, and that by reason of such gross income was required by law, following the close of each calendar year and on or before April 15 of the following year, to make an income tax return to the Director, Internal Revenue Service Center, at Philadelphia, Pennsylvania, or other proper officer of the United States, stating specifically the items of his gross income and any deductions and credits to which he was entitled; that knowing this, he willfully failed to make an income tax return to the Director of the Internal Revenue Service Center, or to any other proper officer of the United States:

<u>COUNT</u>	<u>YEAR</u>	<u>APPROXIMATE GROSS INCOME</u>
THREE	2005	\$295,886
FOUR	2006	\$129,310
FIVE	2007	\$383,881

All in violation of Title 26, United States Code, Section 7203.

COUNT SIX

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 5 of Count One are incorporated here.

2. Between in or about July 2006, through the date of this third superseding indictment, in the Eastern District of Pennsylvania, and elsewhere, defendant

DAVID F. KANE

willfully engaged in a continuing attempt to evade and defeat payment of taxes, penalties, and interest due under an IRS assessment in the amount of \$601,310 made against defendant KANE on or about July 6, 2006, through various means.

3. As part of this attempt to evade payment of the IRS assessment, defendant DAVID F. KANE did the following:

(a) he failed to file timely federal income tax returns which reported his income;

(b) he substantially ceased use of his personal bank account at Harleysville National Bank, from which the IRS had seized funds in approximately May 2006, and established an account at another bank in the name of Celtic Development, LLC, a company he controlled. Thereafter, he directed abstract companies to pay portions of his real estate earnings directly to Celtic Development, LLC;

(c) he directed title companies to pay his real estate earnings to another title company where he had established an escrow account, and then caused his personal expenses to be paid from the escrow account;

(e) he caused the wire transfer of his KCI earnings to his personal bank

account;

(g) he failed to report as income tens of thousands of dollars in personal expenses paid from corporate funds; and

(h) he titled his house in the name of his brother, and lied to the abstract company handling the sale of the house in order to have his brother and himself receive the sale proceeds, when the proceeds should have been paid to the IRS to satisfy the \$601,310 tax lien filed against him.

All in violation of Title 26, United States Code, Section 7201.

COUNT SEVEN

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 and 4 of Count One are incorporated here.

THE SCHEME

2. From in or about July 2008, through the date of this third superseding indictment, defendant

DAVID F. KANE

devised and intended to devise a scheme to defraud the Internal Revenue service (IRS) and to obtain money and property by means of false and fraudulent pretenses, representations and promises.

MANNER AND MEANS

It was part of the scheme that:

3. In approximately October 2001 defendant DAVID F. KANE and his wife purchased a home on Bragg Road in Schwenksville, Pennsylvania.

4. Since defendant DAVID F. KANE had not filed federal tax returns or paid federal taxes for at least several years before the purchase, he caused the house to be placed in the name of his brother, John Kane, to prevent other creditors and the Internal Revenue Service (IRS) from seizing it to pay debts, and past-due federal income taxes, interest, and penalties owed by defendant KANE. John Kane obtained a mortgage on the property.

5. After the purchase, defendant DAVID F. KANE would pay the amount of the mortgage and other monthly fees to his brother, John Kane, after which John Kane would pay the mortgage and fees to the mortgage holder.

6. On approximately July 5, 2006, the IRS placed a federal tax lien in the amount of \$601,310,44 against defendant DAVID F. KANE, comprised of taxes, penalties, and interest due for tax years 1999 through 2002, when defendant KANE earned significant income but did not file income tax returns or pay federal income taxes. Notice of the lien was filed in the Montgomery County Courthouse.

7. In approximately July 2008, defendant DAVID F. KANE decided to sell the home on Bragg Road. The abstract company handling the sale of the home had become aware of the lien against David F. Kane and that the home was titled in the name of John Kane. Defendant DAVID F. KANE and John Kane lied to the abstract company when they said that defendant DAVID F. KANE had no equitable interest in the property. The abstract company requested an affidavit repeating that claim. John Kane then sent an affidavit to the abstract company, which defendant DAVID F. KANE also signed, which falsely stated that defendant DAVID F. KANE had no equitable interest in the property. Thereafter, the sale of the home was completed and the abstract company created a check representing the proceeds of the sale dated July 25, 2008 and made payable to John David Kane in the amount of \$152,314.71. At John Kane's request, the check was given to defendant DAVID F. KANE, who was present at the closing of the sale of the property.

8. On approximately July 28, 2008, John Kane deposited the proceeds check to his personal bank account at Bank of America. Between July 2008 and December 2008 John Kane wrote a total of \$21,000 in checks from his personal account to defendant DAVID F. KANE'S company, Celtic Development.

On or about July 14, 2008, in the Eastern District of Pennsylvania and elsewhere,
defendant

DAVID F. KANE,

for the purpose of executing the scheme described above, and attempting to do so, and aiding and abetting its execution, knowingly caused to be delivered by private or commercial interstate carrier according to the directions thereon, a package from John Kane at Vector Marketing, Gibbsboro, New Jersey, to West Ridge Abstract, Limerick, Pennsylvania, which contained an affidavit which stated, falsely, that defendant DAVID F. KANE, resident of 11 Bragg Road, Limerick Township, Pennsylvania, “does not have and never did have, an equitable interest in the property 11 Bragg Road, Limerick Township,” when, in fact, defendant KANE did have an equitable interest in the property.

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNT EIGHT

THE GRAND JURY FURTHER CHARGES THAT:

At all times material to this third superseding indictment:

1. Harleysville National Bank (“HNB”) was a financial institution located in Harleysville, Pennsylvania, the deposits of which were insured by the Federal Deposit Insurance Corporation.

2. On or about July 18, 2005, in the Eastern District of Pennsylvania, and elsewhere, defendant

DAVID F. KANE

knowingly made and caused to be made to HNB a false statement for the purpose of influencing the actions of HNB upon a \$750,000 business loan for his business, KCI, in that defendant KANE caused to be submitted to HNB a false loan application in which defendant KANE falsely claimed that he had no “unpaid income taxes” when, in fact, he was aware that he had not filed income tax returns or paid federal income taxes during 1999 through 2003 and that he owed significant unpaid taxes to the IRS.

In violation of Title 18, United States Code, Section 1014.

COUNT NINE

THE GRAND JURY FURTHER CHARGES THAT:

At all times material to this third superseding indictment:

1. Paragraphs 1 through 5 of Count One are incorporated here.
2. Between in or about 2002 and April 2008, in the Eastern District of

Pennsylvania, and elsewhere, defendant

DAVID F. KANE

knowingly executed, and attempted to execute, and aided and abetted the execution and attempted execution of a scheme to defraud HNB, and to obtain monies owned by and under the care, custody, and control of that bank by means of false and fraudulent pretenses, representations, and promises.

THE SCHEME

3. Between approximately 2002 and 2005, defendant DAVID F. KANE and Mark G. Marino applied for more than \$2.5 million in loans from HNB to use to operate KCI and to purchase real estate for development.

4. Because defendant DAVID F. KANE had poor credit and did not want to provide financial information to HNB for fear that the IRS or others may obtain it and use it to seek payment of amounts owed to the IRS and other creditors, defendant KANE enlisted John D. Kane to assist him in submitting false loan applications to HNB. Specifically, defendant KANE and John D. Kane falsely claimed to HNB that John D. Kane was the “majority owner” of and acted as a “consultant” to KCI when, in fact, John D. Kane did not own KCI and had no role in its operation, and defendant KANE and Mark G. Marino were the true owners. By using John D.

Kane as a straw owner of KCI, defendant KANE concealed his true financial condition from HNB, including the fact that he had hundreds of thousands of dollars in unpaid debts, including taxes, interest, and penalties due to the IRS.

5. Defendant DAVID F. KANE also submitted a false loan application and financial statement to HNB which did not disclose all of his debts, including his debt owed to the IRS.

6. As a result of the scheme to defraud, including the false statements described above, defendant DAVID F. KANE fraudulently obtained more than \$2.5 million in loans from HNB.

In violation of Title 18, United States Code, Sections 1344 and 2.

NOTICE OF FORFEITURE

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. As a result of the violations of Title 18, United States Code, Sections 1014 and 1344 set forth in this third superseding indictment, defendant

DAVID F. KANE

shall forfeit to the United States of America any property constituting, or derived from, proceeds obtained directly or indirectly from the commission of such offenses, including at least \$2.5 million.

2. If any of the property described above, as a result of any actor omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred to, sold to, or deposited with a third party;
- c. has been placed beyond the jurisdiction of this Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intention of the United States, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of the defendant up to the value of the property subject to forfeiture.

All pursuant to Title 18, United States Code, Section 981(a)(1)(C), 28 U.S.C.

§ 2461, and United States Code, Section 853.

A TRUE BILL:

FOREPERSON

ZANE DAVID MEMEGER
United States Attorney