

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

FILED
VANESSA L. ARMSTRONG, CLERK
SEP 17 2019
U.S. DISTRICT COURT
WEST'N. DIST. KENTUCKY

UNITED STATES OF AMERICA

v.

MARVIN L. UPTON
CYNTHIA UPTON

INFORMATION

NO.: 5:19CR53-TBR

18 U.S.C. § 1344
18 U.S.C. § 1349
26 U.S.C. § 7206(1)
18 U.S.C. § 981(a)(1)(C)
18 U.S.C. § 982(a)(2)
26 U.S.C. § 7301
26 U.S.C. § 7303
28 U.S.C. § 2461

The United States Attorney charges:

COUNT 1

(Conspiracy to Commit Bank Fraud)

From in or about April 2013 through March 2016, in the Western District of Kentucky, Christian County, Kentucky, and elsewhere, **MARVIN L. UPTON** and **CYNTHIA UPTON**, defendants herein, did conspire with each other to execute a scheme or artifice to defraud a financial institution, in violation of Title 18, United States Code, Section 1344.

Manner and Means

It was part of the conspiracy that from in or about April 2013 through September 2014, **MARVIN L. UPTON** and **CYNTHIA UPTON**, with intent to deceive and cheat D.G. for the purpose of bringing about a financial gain to themselves, caused D.G., who was suffering from dementia, to issue checks from his First United Bank account in Madisonville, Kentucky to **MARVIN L. UPTON** and **CYNTHIA UPTON** totaling \$344,900.

It was further a part of the conspiracy that from in or about May 2014 through March 2016 **MARVIN L. UPTON** and **CYNTHIA UPTON**, with intent to deceive and cheat D.G. for the purpose of bringing about a financial gain to themselves, caused D.G., who was suffering from dementia, to withdraw \$187,000 in cash and \$72,505 in cashier's checks from his Fifth Third Bank account in Nortonville, Kentucky, and to provide the vast majority of this money to **MARVIN L. UPTON** and **CYNTHIA UPTON**.

It was further a part of the conspiracy that from in or about December 2015 through March 2016, **MARVIN L. UPTON** and **CYNTHIA UPTON**, with intent to deceive and cheat D.G. for the purpose of bringing about a financial gain to themselves, caused D.G., who was suffering from dementia, to sign a Power of Attorney, which **CYNTHIA UPTON** used to withdraw \$41,873.67 of D.G.'s retirement assets from United Southern Bank in Crofton, Kentucky.

In violation of Title 18, United States Code, Section 1349.

The United States Attorney further charges:

COUNT 2
(*Bank Fraud*)

From in or about April 2013 through September 2014, in the Western District of Kentucky, Christian County, Kentucky, and elsewhere, **MARVIN L. UPTON** and **CYNTHIA UPTON**, defendants herein, did knowingly execute a material scheme or artifice to defraud First United Bank, which at the time was a federally insured financial institution, and to obtain money owned by and under the control of First United Bank, by materially false and fraudulent pretenses, representations and promises, to wit: **MARVIN L. UPTON** and **CYNTHIA UPTON**, with intent to deceive and cheat D.G. for the purpose of bringing about a financial gain to themselves, caused

D.G., who was suffering from dementia, to issue checks to **MARVIN L. UPTON** and **CYNTHIA UPTON**, totaling \$344,900.

In violation of Title 18, United States Code, Section 1344.

The United States Attorney further charges:

COUNT 3
(*Bank Fraud*)

From in or about May 2014 through March 2016, in the Western District of Kentucky, Christian County, Kentucky, and elsewhere, **MARVIN L. UPTON** and **CYNTHIA UPTON**, defendants herein, did knowingly execute and attempt to execute a material scheme or artifice to defraud Fifth Third Bank, which at the time was a federally insured financial institution, and to obtain money owned by and under the control of Fifth Third Bank, by materially false and fraudulent pretenses, representations and promises, to wit: **MARVIN L. UPTON** and **CYNTHIA UPTON**, with intent to deceive and cheat D.G. for the purpose of bringing about a financial gain to themselves, caused D.G., who was suffering from dementia, to withdraw \$187,000 in cash and \$72,505 in cashier's checks, and to provide the vast majority of this money to **MARVIN L. UPTON** and **CYNTHIA UPTON**.

In violation of Title 18, United States Code, Section 1344.

The United States Attorney further charges:

COUNT 4
(*Bank Fraud*)

From in or about December 2015 through March 2016, in the Western District of Kentucky, Christian County, Kentucky, and elsewhere, **MARVIN L. UPTON** and **CYNTHIA**

UPTON, defendants herein, did knowingly execute and attempt to execute a material scheme or artifice to defraud United Southern Bank, which at the time was a federally insured financial institution, and to obtain money owned by and under the control of United Southern Bank, by materially false and fraudulent pretenses, representations and promises, to wit: **MARVIN L. UPTON** and **CYNTHIA UPTON**, with intent to deceive and cheat D.G. for the purpose of bringing about a financial gain to themselves, caused D.G., who was suffering from dementia, to sign a Power of Attorney, which **CYNTHIA UPTON** used to withdraw \$41,873.67 of D.G.'s retirement assets.

In violation of Title 18, United States Code, Section 1344.

The United States Attorney further charges:

COUNT 5
(False Return)

That on or about February 2, 2014, in the Western District of Kentucky, Christian County, Kentucky, **MARVIN L. UPTON** and **CYNTHIA UPTON**, defendants herein, residents of Crofton, Kentucky, did willfully make and subscribe a joint U.S. Individual Income Tax Return, Form 1040, for the calendar year 2013, which was verified by a written declaration that it was made under the penalties of perjury. **MARVIN L. UPTON** and **CYNTHIA UPTON** did not believe the return, which was filed with the Internal Revenue Service, to be true and correct as to every material matter in that the return failed to disclose that they had received approximately \$122,810 from D.G., including \$4,650 for "Cindy's Cleaning Services." **MARVIN L. UPTON** and **CYNTHIA UPTON** then and there well knew that each of them was required by law and regulation to disclose the income they had received from D.G.

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

The United States Attorney further charges:

COUNT 6
(False Return)

That on or about February 2, 2015, in the Western District of Kentucky, Christian County, Kentucky, **MARVIN L. UPTON** and **CYNTHIA UPTON**, defendants herein, residents of Crofton, Kentucky, did willfully make and subscribe a joint U.S. Individual Income Tax Return, Form 1040, for the calendar year 2014, which was verified by a written declaration that it was made under the penalties of perjury. **MARVIN L. UPTON** and **CYNTHIA UPTON** did not believe the return, which was filed with the Internal Revenue Service, to be true and correct as to every material matter in that the return failed to disclose that they had received approximately \$321,505 from D.G., including \$43,000 for “Cindy’s Cleaning Services.” **MARVIN L. UPTON** and **CYNTHIA UPTON** then and there well knew that each of them was required by law and regulation to disclose the income they had received from D.G.

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

The United States Attorney further charges:

COUNT 7
(False Return)

That on or about January 31, 2016, in the Western District of Kentucky, Christian County, Kentucky, **MARVIN L. UPTON** and **CYNTHIA UPTON**, defendants herein, residents of Crofton, Kentucky, did willfully make and subscribe a joint U.S. Individual Income Tax Return, Form 1040, for the calendar year 2015, which was verified by a written declaration that it was made under the penalties of perjury. **MARVIN L. UPTON** and **CYNTHIA UPTON** did not believe the return, which was filed with the Internal Revenue Service, to be true and correct as to

every material matter in that the return failed to disclose that they had received approximately \$243,142 from D.G. **MARVIN L. UPTON** and **CYNTHIA UPTON** then and there well knew that each of them was required by law and regulation to disclose the income they had received from D.G.

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

NOTICE OF FORFEITURE

If convicted of any violation of Title 18, United States Code, Sections 1344 or 1349, or Title 26, United States Code, Section 7206 as set forth in this Indictment, **MARVIN L. UPTON** and **CYNTHIA UPTON**, the defendants, shall forfeit to the United States any property constituting or derived from any proceeds obtained, directly or indirectly, as the result of such violations, and any property used or intended to be used, in any manner or part, to commit or to facilitate the commission of these violations.

Pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a)(2), Title 26, United States Code, Section 7301 and 7303, and Title 28, United States Code, Section 2461.



RUSSELL M. COLEMAN
UNITED STATES ATTORNEY

RMC:MTS

UNITED STATES OF AMERICA v. MARVIN L. UPTON and CYNTHIA UPTON

PENALTIES

Count 1-4: NM 30 yrs./\$1,000,000/both/NM 5 yrs. Supervised Release

Counts 5-7: NM 3 yrs./\$100,000/both/NM 3 yrs. Supervised Release

Forfeiture

NOTICE

ANY PERSON CONVICTED OF AN OFFENSE AGAINST THE UNITED STATES SHALL BE SUBJECT TO SPECIAL ASSESSMENTS, FINES, RESTITUTION & COSTS.

SPECIAL ASSESSMENTS

18 U.S.C. § 3013 requires that a special assessment shall be imposed for each count of a conviction of offenses committed after November 11, 1984, as follows:

Misdemeanor:	\$ 25 per count/individual	Felony:	\$100 per count/individual
	\$125 per count/other		\$400 per count/other

FINES

In addition to any of the above assessments, you may also be sentenced to pay a fine. Such fine is due immediately unless the court issues an order requiring payment by a date certain or sets out an installment schedule. You shall provide the United States Attorney's Office with a current mailing address for the entire period that any part of the fine remains unpaid, or you may be held in contempt of court. 18 U.S.C. § 3571, 3572, 3611, 3612

Failure to pay fine as ordered may subject you to the following:

1. **INTEREST** and **PENALTIES** as applicable by law according to last date of offense.

For offenses occurring after December 12, 1987:

No **INTEREST** will accrue on fines under \$2,500.00.

INTEREST will accrue according to the Federal Civil Post-Judgment Interest Rate in effect at the time of sentencing. This rate changes monthly. Interest accrues from the first business day following the two week period after the date a fine is imposed.

PENALTIES of:

10% of fine balance if payment more than 30 days late.

15% of fine balance if payment more than 90 days late.

2. Recordation of a **LIEN** shall have the same force and effect as a tax lien.
3. Continuous **GARNISHMENT** may apply until your fine is paid.

18 U.S.C. §§ 3612, 3613

If you **WILLFULLY** refuse to pay your fine, you shall be subject to an **ADDITIONAL FINE** of not more than the greater of \$10,000 or twice the unpaid balance of the fine; or **IMPRISONMENT** for not more than 1 year or both. 18 U.S.C. § 3615

RESTITUTION

If you are convicted of an offense under Title 18, U.S.C., or under certain air piracy offenses, you may also be ordered to make restitution to any victim of the offense, in addition to, or in lieu of any other penalty authorized by law. 18 U.S.C. § 3663

APPEAL

If you appeal your conviction and the sentence to pay your fine is stayed pending appeal, the court shall require:

1. That you deposit the entire fine amount (or the amount due under an installment schedule during the time of your appeal) in an escrow account with the U.S. District Court Clerk, or
2. Give bond for payment thereof.

18 U.S.C. § 3572(g)

PAYMENTS

If you are ordered to make payments to the U.S. District Court Clerk's Office, certified checks or money orders should be made payable to the Clerk, U.S. District Court and delivered to the appropriate division office listed below:

LOUISVILLE:	Clerk, U.S. District Court 106 Gene Snyder U.S. Courthouse 601 West Broadway Louisville, KY 40202 502/625-3500
BOWLING GREEN:	Clerk, U.S. District Court 120 Federal Building 241 East Main Street Bowling Green, KY 42101 270/393-2500
OWENSBORO:	Clerk, U.S. District Court 126 Federal Building 423 Frederica Owensboro, KY 42301 270/689-4400
PADUCAH:	Clerk, U.S. District Court 127 Federal Building 501 Broadway Paducah, KY 42001 270/415-6400

If the court finds that you have the present ability to pay, an order may direct imprisonment until payment is made.