

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN (DUBUQUE) DIVISION

|                           |   |                              |
|---------------------------|---|------------------------------|
| UNITED STATES OF AMERICA, | ) | No. 19-CR-1035               |
|                           | ) |                              |
| Plaintiff,                | ) | <b>INFORMATION</b>           |
|                           | ) |                              |
| vs.                       | ) | Count 1                      |
|                           | ) | 18 U.S.C. § 1343: Wire Fraud |
| H. DAVID DERBY and        | ) |                              |
| PATTI LYNN DERBY,         | ) |                              |
|                           | ) | <u>Forfeiture</u>            |
| Defendants.               | ) |                              |

The United States Attorney charges:

**Count 1**

**Wire Fraud**

Introduction

1. At all relevant times, M.D., a former school teacher, was an elderly woman who resided in an assisted living facility in Dubuque, Iowa, within the Northern District of Iowa. Due to mental and physical disabilities, M.D. was unable to manage her financial affairs or care for herself.

2. Defendant H. DAVID DERBY is M.D.'s son. Defendant PATTI LYNN DERBY is married to H. DAVID DERBY and is M.D.'s daughter-in-law.

3. At all times relevant to this Information, Dubuque Bank & Trust ("DB&T") is a financial institution in Dubuque, Iowa, within the Northern District of Iowa, whose deposits were insured by the Federal Deposit Insurance Corporation. M.D. had an account at DB&T. M.D.'s account number ended with 0793.

Defendants H. DAVID DERBY and PATTI LYNN DERBY also had an account at DB&T. The account of H. DAVID DERBY and PATTI LYNN DERBY ended in 9378.

#### The Scheme to Defraud

4. Beginning no later than September 2013, and continuing through at least September 2017, in the Northern District of Iowa, and elsewhere, defendants H. DAVID DERBY and PATTI LYNN DERBY did voluntarily and intentionally participate in a scheme, with knowledge of its fraudulent nature, to defraud and to obtain money and property by means of false and fraudulent pretenses, representations, and promises (“the scheme to defraud”).

#### Manner and Means of the Scheme to Defraud

5. On October 12, 2012, M.D. signed a general power of attorney form (“the 2012 POA”) appointing H. DAVID DERBY as her attorney-in-fact. In the 2012 POA, M.D. granted H. DAVID DERBY authority to manage M.D.’s financial affairs. However, the 2012 POA expressly stated that H. DAVID DERBY was not permitted to make any gifts to himself and, except for reasonable expenses incurred as a result of carrying out the 2012 POA’s provisions, would receive no compensation for his services as M.D.’s attorney-in-fact.

6. No later than September 2013, H. DAVID DERBY presented the 2012 POA to DB&T as authority for H.DAVID DERBY to access M.D.’s account ending in 0793 at DB&T. Under the authority of the 2012 POA, H. DAVID DERBY and

PATTI LYNN DERBY thereafter repeatedly transferred funds from M.D.'s account at DB&T ending in 0793 to their own account at DB&T ending in 9378.

7. On January 5, 2016, M.D. signed a general power of attorney form ("the 2016 POA") revoking the 2012 POA. In the 2016 POA, M.D. appointed H. DAVID DERBY and PATTI LYNN DERBY as her attorneys-in-fact. The 2016 POA granted H. DAVID DERBY and PATTI LYNN DERBY authority to manage M.D.'s financial affairs. Again, however, the 2016 POA expressly stated that H. DAVID DERBY and PATTI LYNN DERBY were not permitted to make any gifts to themselves and, except for reasonable expenses incurred as a result of carrying out the 2016 POA's provisions, would receive no compensation for their services as M.D.'s attorneys-in-fact.

8. On February 1, 2016, defendants H. DAVID DERBY and PATTI LYNN DERBY signed an affidavit ("the Affidavit"), entitled "Agent's Certification as to the Validity of the Power of Attorney and Agent's Authority." In the Affidavit, defendants H. DAVID DERBY and PATTI LYNN DERBY each falsely "certif[ied] under penalty of perjury that [M.D.] had granted [them] authority as an agent or successor agent in a power of attorney dated 01/05/2016." In truth, M.D. was the resident of an assisted living facility who suffered from Alzheimer's disease and dementia, and she was wholly incapable of validly executing the 2016 POA, as defendants H. DAVID DERBY and PATTI LYNN DERBY well knew at that time.

9. No later than February 2016, defendants H. DAVID DERBY and PATTI LYNN DERBY presented the 2016 POA to DB&T as authority for

defendants H. DAVID DERBY and PATTI LYNN DERBY to access M.D.'s account ending in 0793 at DB&T. Under the authority of the 2016 POA, H. DAVID DERBY and PATTI LYNN DERBY thereafter repeatedly transferred funds from M.D.'s account at DB&T ending in 0793 to their own account at DB&T ending in 9378.

10. After transferring funds from M.D.'s account at DB&T ending in 0793 to their own account at DB&T ending in 9378, by means of the 2012 POA, the 2016 POA, and the Affidavit, defendants H. DAVID DERBY and PATTI LYNN DERBY used those funds for their own benefit. In this manner, H. DAVID DERBY and PATTI LYNN DERBY obtained no less than \$147,000 from the DB&T accounts. Defendants H. DAVID DERBY and PATTI LYNN DERBY would then use those funds for their own purposes, including but not limited to vacations, concert tickets, insurance, and personal items.

11. By about October 1, 2017, H. DAVID DERBY and PATTI LYNN DERBY had obtained and spent for their own benefit nearly all of M.D.'s funds from M.D.'s account at DB&T ending in 0793. As a result, M.D. was no longer able to continue to pay to live in the assisting living facility at which she had resided for years.

#### Execution of the Scheme to Defraud

12. Beginning no later than September 2013, and continuing through at least September 2017, in the Northern District of Iowa, and elsewhere, defendants H. DAVID DERBY and PATTI LYNN DERBY knowingly executed and attempted to execute the scheme to defraud by transferring moneys from M.D.'s account ending

in 0793 at DB&T to a joint account of defendants H. DAVID DERBY and PATTI LYNN DERBY ending in 9378. Then, from their joint account ending in 9378 at DB&T, and for the purpose of executing or attempting to execute the above-described scheme and artifice to defraud and to obtain property and money by means of false and fraudulent pretenses and representations, defendants H. DAVID DERBY and PATTI LYNN DERBY, knowingly caused to be transmitted by means of wire in interstate commerce, the following writings, signs, signals, pictures, or sounds:

On or about May 5, 2017, defendants H. DAVID DERBY and PATTI LYNN DERBY caused DB&T to wire \$330.30 for the purchase of two tickets to an Elton John concert.

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

**Forfeiture Allegation - Wire Fraud**

13. The allegations contained in Count 1 of this Information are hereby re-alleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 982(a)(8).

14. Upon conviction of the offense in violation of Title 18, United States Code, Section 1343 set forth in Count 1 of this Information, defendants, H. DAVID DERBY and PATTI LYNN DERBY, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(8), any real or personal property --

(A) used or intended to be used to commit, to facilitate, or to promote the commission of such offense; and

(B) constituting, derived from, or traceable to the gross proceeds obtained directly or indirectly as a result of the offense.

The property to be forfeited includes, but is not limited to, the following: the joint account ending in 9378 at Dubuque Bank & Trust.

15. If any of the property described above, as a result of any act or omission of the defendants:

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

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1) and Title 28, United States Code, Section 2461(c).

All pursuant to 18 U.S.C. § 982(a)(8) and 28 U.S.C. § 2461(c).

PETER E. DEEGAN, JR.  
United States Attorney

By: /s/ Timothy L. Vavricek

TIMOTHY L. VAVRICEK  
Assistant United States Attorney