

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

UNITED STATES OF AMERICA

v.

CASE NO. 3:17cr107/MCR

ADAM W. FAIR

STATEMENT OF FACTS

The parties agree with the truthfulness of the following factual basis for the defendant's guilty plea. The undersigned parties further agree that not all of the facts known from this investigation are contained in this brief summary.

An individual named M.I.S. owned and operated Simplex Corporation ("Simplex"), a company that furnished supplies, materials, equipment, and services to the United States Air Force ("USAF"). Between in or about 2010, and in or about 2012, M.I.S. and Simplex were awarded contracts with the USAF to provide Mi-17 helicopters and parts to the USAF to be used by the USAF; these contracts stipulated that the USAF would pay Simplex a reduced rate if helicopters were not available as required by the contract.

L-3 Communications and Lockheed Martin Corporation ("Lockheed") were prime contractors that entered into a contract with the USAF to furnish supplies, materials, equipment, and services to the USAF. Defense Support Services, LLC

(“Defense Support Services”) was a subcontractor that furnished supplies, materials, equipment, and services to Lockheed. Between in or about 2010, and in or about 2012, Lockheed, L-3 Communications, and Defense Support Services, as a subcontractor of Lockheed, were awarded contracts with the USAF to provide maintenance checks and maintenance work on the Mi-17 helicopters and parts provided to the USAF by M.I.S. and Simplex. The maintenance work was taking place on the Mi-17 helicopters which were being used by the USAF at Hurlburt Field, a USAF base within the Northern District of Florida.

Between on or about February 23, 2009, and on or about October 1, 2010, the defendant Adam W. Fair (hereinafter “Fair”) was employed by L-3 Communications as a maintenance superintendent responsible for installing, maintaining, repairing, modifying, and operating equipment, as well as maintaining performance and maintenance records on equipment. Between on or about October 1, 2010, and on or about September 11, 2011, Fair was employed by Defense Support Services as a maintenance supervisor.

Between in or about 2009, and on or about October 1, 2010, co-conspirator Ryan J. Romero (hereinafter “Romero”) was employed by L-3 Communications as a maintenance manager, who was responsible for preparing maintenance reports, advising USAF personnel on maintenance issues, and supervising and evaluating mechanics as they performed maintenance, inspections, and other duties on aircraft

and other equipment. Between on or about October 1, 2010, and on or about August 5, 2012, Romero was employed by Lockheed as a maintenance manager responsible for preparing maintenance reports, advising USAF personnel on maintenance issues, and supervising and evaluating mechanics as they performed maintenance, inspections, and other duties on aircraft and other equipment.

Fair and Romero used their positions as employees of L-3 Communications, Lockheed, and Defense Support Services to obtain kick-backs and other monies in exchange for giving favorable treatment to M.I.S. and Simplex. In or about May 2010, M.I.S. needed to disassemble and assemble helicopters, and sought the help of Romero. Romero and Fair agreed to assist M.I.S. and caused employees of L-3 Communications to perform the work on the Mi-17 helicopters owned by M.I.S. and Simplex without L-3 Communications being aware of and compensated for this work. In exchange for the work L-3 Communications employees performed on the helicopters, Romero received two payments totaling \$40,000, and Fair received a single payment of \$15,000. Specifically, a \$20,000 wire transfer was issued by M.I.S., or another on M.I.S.'s behalf, to a bank account belonging to Romero's wife. An additional \$20,000 payment to Romero was sent as cash by M.I.S. onboard the plane that transported the helicopters to Hurlburt Field. After receiving the \$20,000 cash payment, Romero kept \$10,000, issued a \$5,000 check to Fair, and provided \$5,000 to another individual. In addition, a \$15,000 wire transfer was issued by

M.I.S., or another on M.I.S.'s behalf, to a bank account belonging to Fair. In total, Romero received \$30,000, and Fair received \$20,000 for their assistance in disassembling and assembling helicopters for M.I.S.

In or about August 2010, Romero, while employed as a maintenance manager for L-3 Communications, contacted M.I.S. and solicited kick-backs from M.I.S. and Simplex in exchange for the agreement of Romero and Fair to provide favorable maintenance inspection reports to the USAF for all maintenance inspections on the Mi-17 helicopters that M.I.S. and Simplex supplied to the USAF. M.I.S. agreed that in exchange for the favorable reports provided by Romero and Fair to the USAF, M.I.S. would give Romero and Fair approximately \$6,000 in kick-back payments each month. Fair created a company named A&R Aviation Logistics Solutions, Inc., and registered the company in the state of Delaware, listing Fair and Romero as the points of contact on the registration. Romero and Fair opened Wells Fargo (formerly Wachovia) bank accounts ending in -9540 and -9524, in the name of A&R Aviation Logistics Solutions, Inc., and maintained signature authority on those accounts. Romero and Fair caused favorable maintenance inspection reports to be submitted to the USAF for maintenance inspections on the Mi-17 helicopters that M.I.S. and Simplex supplied to the USAF; these favorable reports falsely represented that certain Mi-17 helicopters were fully mission capable, when in truth, there were maintenance issues that needed to be addressed prior to the helicopters being ready

to fly. In exchange for favorable reports by Romero and Fair, M.I.S. caused a total of approximately \$156,000, through monthly installments of approximately \$6,000, to be transferred to the A&R Aviation Logistics Solutions, Inc., account ending in -9540. Romero and Fair transferred approximately \$153,177.16 from the A&R Aviation Logistics Solutions, Inc., account ending in -9540 to themselves and to accounts they controlled.

In or about July 2010, Romero and Fair purchased an aircraft tug for approximately \$10,000. In or about July 2010, Romero falsely represented to Lockheed that M.I.S. and Simplex owned an aircraft tug that was available for Lockheed to lease, when in truth, Romero and Fair, and not M.I.S. nor Simplex, owned the aircraft tug being offered for lease to Lockheed. In or about October 2010, M.I.S., as an agent of Simplex, entered a contract with Lockheed under which Simplex agreed to lease to Lockheed an aircraft tug for approximately \$12,000 a year, payable in monthly installments of approximately \$1,000. M.I.S. entered the contract under the false pretense that Simplex, rather than Romero and Fair, was providing the aircraft tug. Lockheed passed these expenses on to the USAF since the tug was being used for the maintenance contract Lockheed had with the USAF. Over a period of 25 months, M.I.S. obtained a total of approximately \$25,000 in payments from Lockheed for the lease of the aircraft tug owned by Romero and Fair. M.I.S. transferred approximately \$23,150 of these payments to Romero and Fair and

to accounts controlled by them.

All the money deposited into the two accounts was from Romero and Adam Fair's unlawful activities. On February 25, 2013, Romero made the last transfer from the account ending in -9540 to the account ending in -9524. On May 17, 2013, ROMERO made the last withdrawal from the account ending in -9524.

On or about July 6, 2016, Fair was interviewed by agents. During the interview, Fair admitted that he received a \$15,000 wire transfer to his Wells Fargo account, which he agreed was payment from M.I.S. for Fair's assistance in disassembling and assembling helicopters for M.I.S. Fair admitted that M.I.S. saved a lot of money by having Fair, Romero and their employees do the work. Fair admitted that ~~he and~~ Romero reached an agreement with M.I.S. to make sure M.I.S.'s helicopters always appeared on reports as though they were available in exchange for \$6,000/month payments from M.I.S. Fair explained that M.I.S. would lose money from the USAF pursuant to the contract between M.I.S. and the USAF for the days M.I.S.'s helicopters were reported as unavailable, and that is why Fair and Romero agreed to always report them as available. Fair stated he did not alter any records. Rather, he explained there was some "looking the other way" at times when they failed to report the aircraft being broken and therefore, unavailable. Fair agreed that he and Romero had the authority to make these reports or "look the other way" and not make them. Fair stated his last day was August 25, 2011, when Fair was

arrested for Aggravated Battery (the charges were eventually dropped), and as a result, his security clearance was revoked. Fair said his last payment or portion of the payment was received from M.I.S. on August 29, 2011.

In an August 24, 2011, email from Fair to M.I.S., Fair spoke to M.I.S. about the May-August Tug invoices. Specifically, Fair wrote, “Ryan mentioned you may want to buy my interest in A&R. As you know, I am desperate and open to any dialog. Also received the 5K. Thanks.” M.I.S. responded to Fair’s email on the same date and asked “How much do you want for your half of the tug?” Fair responded “5K for hlf of tug.” Then on August 24, 2011, Fair sent M.I.S. an email that stated, “[M.I.S.], Attached invoice for 50% of the tug. This will certainly help me through this bullshit. Thanks. Adam.” An August 25, 2011, invoice from Romero and Fair to M.I.S. reflected “50% Controlling interest from Adam Fair” in exchange for \$5,000. There was another invoice that month which requested the standard \$1,000 payment from M.I.S. Records for bank account ending in -9542 reflected a transfer of \$6,000 from account ending in -9540 on or about August 15, 2011. On that same day, Fair withdrew \$3,000 from the account ending -9540. At the same time, a \$2,500 check was issued from that account to Fair, which Fair deposited into a personal bank account. On August 29, 2011, Fair issued a check to himself in the amount of \$4,698. In the memo of that check, Fair wrote “Tug Sale.”

In total, from their involvement in the conspiracy together, and with other

persons, as alleged in the indictment, Romero and Fair received approximately \$227,500, which they were not entitled to receive. Of that total, Fair received approximately \$67,134.30.

ELEMENTS:

Count One: Conspiracy to Commit an Offense Against the United States, namely, Wire Fraud and Honest Services Fraud.

Conspiracy:

It's a separate Federal crime for anyone to conspire or agree with someone else to do something that would be another Federal crime if it was actually carried out.

A "conspiracy" is an agreement by two or more people to commit an unlawful act. In other words, it is a kind of "partnership" for criminal purposes. Every member of the conspiracy becomes the agent or partner of every other member.

The Government does not have to prove that all the people named in the indictment were members of the plan, or that those who were members made any kind of formal agreement.

The Government does not have to prove that the members planned together *all* the details of the plan or the "overt acts" that the indictment

charges would be carried out in an effort to commit the intended crime.

The heart of a conspiracy is the making of the unlawful plan itself followed by the commission of any overt act. The Government does not have to prove that the conspirators succeeded in carrying out the plan.

The Defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt:

1. two or more persons in some way agreed to try to accomplish a shared and unlawful plan;
2. the Defendant knew the unlawful purpose of the plan and willfully joined in it;
3. during the conspiracy, one of the conspirators knowingly engaged in at least one overt act described in the indictment; and
4. the overt act was committed at or about the time alleged and with the purpose of carrying out or accomplishing some object of the conspiracy.

An "overt act" is any transaction or event, even one which may be entirely innocent when viewed alone, that a conspirator commits to accomplish some object of the conspiracy.

A person may be a conspirator without knowing all the details of the unlawful plan or the names and identities of all the other alleged conspirators.

If the Defendant played only a minor part in the plan but had a general understanding of the unlawful purpose of the plan and willfully joined in the plan on at least one occasion, that's sufficient for the jury to find the Defendant guilty.

But simply being present at the scene of an event or merely associating with certain people and discussing common goals and interests doesn't establish proof of a conspiracy. A person who doesn't know about a conspiracy, but happens to act in a way that advances some purpose of one doesn't automatically become a conspirator.

In this case, regarding the alleged conspiracy, the indictment charges that the Defendants conspired to commit an offense against the United States, namely: 1) to knowingly and willfully devise, and intend to devise, a scheme to defraud and for obtaining money and property by means of material false and fraudulent pretenses, representations, and promises, and to cause wire communications to be transmitted in interstate commerce for the purpose of executing such scheme, in violation of Title 18, United States Code, Section 1343; and 2) to knowingly and willfully devise, and intend to devise, a scheme to defraud L-3 Communications, Lockheed Martin Corporation, and Defense Support Services, LLC, of the right

to defendants' honest services through kick-backs, and to cause a wire communication to be transmitted in interstate commerce for the purpose of executing such scheme, in violation of Title 18, United States Code, Sections 1343 and 1346. All in violation of Title 18, United States Code, Section 1349.

The Government does not have to prove that the Defendant willfully conspired to commit both crimes. It is sufficient if the Government proves beyond a reasonable doubt that the Defendant willfully conspired to commit one of those crimes. But to return a verdict of guilty, the jury must all agree on which of the two crimes the Defendants conspired to commit.

A conspiracy isn't a crime unless (1) there is an agreement, and (2) a conspirator performs an overt act.

So, if a Defendant joins a conspiracy but later has a change of mind and withdraws from the conspiracy before any conspirator has committed an "overt act," the Defendant isn't guilty of conspiracy.

But to find that a Defendant withdrew from a conspiracy, the jury must find that the Defendant took action to disavow or defeat the purpose of the conspiracy before any member of the conspiracy committed any overt act.

Wire Fraud:

It's a Federal crime to use interstate wire communications to carry out a

scheme to defraud someone else.

The Defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt:

1. the Defendant knowingly devised or participated in a scheme to defraud, or to obtain money or property by using false pretenses, representations, or promises;
2. the false pretenses, representations, or promises were about a material fact;
3. the Defendant acted with the intent to defraud; and
4. the Defendant transmitted or caused to be transmitted by wire some communication in interstate commerce to help carry out the scheme to defraud.

The term “scheme to defraud” includes any plan or course of action intended to deceive or cheat someone out of money or property by using false or fraudulent pretenses, representations, or promises.

A statement or representation is “false” or “fraudulent” if it is about a material fact that the speaker knows is untrue or makes with reckless indifference to the truth, and makes with the intent to defraud. A statement or representation may be “false” or “fraudulent” when it is a half-truth, or effectively conceals a material fact, and is made with the intent to defraud.

A “material fact” is an important fact that a reasonable person would use to decide whether to do or not do something. A fact is “material” if it has the capacity or natural tendency to influence a person's decision. It doesn't matter whether the decision-maker actually relied on the statement or knew or should have known that the statement was false.

The “intent to defraud” is the specific intent to deceive or cheat someone, usually for personal financial gain or to cause financial loss to someone else.

The Government does not have to prove all the details alleged in the indictment about the precise nature and purpose of the scheme. It also doesn't have to prove that the material transmitted by interstate wire was itself false or fraudulent; or that using the wire was intended as the specific or exclusive means of carrying out the alleged fraud; or that the Defendant personally made the transmission over the wire. And it doesn't have to prove that the alleged scheme actually succeeded in defrauding anyone.

To “use” interstate wire communications is to act so that something would normally be sent through wire communications in the normal course of business.

Each separate use of the interstate wire communications as part of the scheme to defraud is a separate crime.

Honest Services Fraud:

It's a Federal crime to use interstate wire communications to carry out a

scheme to fraudulently deprive someone else of a right to honest services.

The Defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt:

1. the Defendant knowingly devised or participated in a scheme to fraudulently deprive the Defendant's employer of the right to honest services of the Defendant through bribery or kick-backs;
2. the Defendant did so with an intent to defraud the Defendant's employer of the right to the honest services;
3. the Defendant foresaw or reasonably should have foreseen that the Defendant's employer might suffer economic harm as a result of the scheme; and
4. the Defendant transmitted or caused to be transmitted by wire some communication in interstate commerce to carry out the scheme to defraud.

A "scheme" means any plan or course of action intended to deceive or cheat someone.

To "deprive someone else of the right of honest services" is to violate a duty to provide honest services to an employer by participating in a bribery or kickback scheme.

An employee who works for a private employer has a legal duty to provide honest services to the employer.

The Government must prove that the Defendant intended to breach that duty by receipt of a bribe or kickback, and foresaw, or should have foreseen, that the employer might suffer economic harm as a result of the breach.

A bribe or a kickback is any money or compensation of any kind which is provided, directly or indirectly, to an employee for the purpose of improperly obtaining or rewarding favorable treatment from the employee in connection with his employment.

To act with “intent to defraud” means to act knowingly and with specific intent to deceive someone, usually for personal financial gain or to cause financial loss to someone else.

The Government does not have to prove all the details alleged in the indictment about the precise nature and purpose of the scheme. It also doesn’t have to prove that the material transmitted by interstate wire was itself false or fraudulent; or that using the wire was intended as the specific or exclusive means of carrying out the alleged fraud; or that the Defendant personally made the transmission over the wire. And it doesn’t have to prove that the alleged scheme actually succeeded in defrauding anyone.

To “use” interstate wire communications is to act so that something would normally be sent through wire communications in the normal course of business.

Each separate use of the interstate wire communications as part of the scheme to defraud is a separate crime.

CHRISTOPHER P. CANOVA
United States Attorney


BARRY W. BEROSET
Attorney for Defendant

3/28/18
Date


ADAM W. FAIR
Defendant

3/28/18
Date


J. RYAN LOVE
Assistant U.S. Attorney
Florida Bar No. 0637920
Northern District of Florida
21 E. Garden Street, Suite 400
Pensacola, Florida 32502-5675
850-444-4000

3/28/18
Date