

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RECEIVED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ APR 10 2018 ★

-----X

UNITED STATES OF AMERICA

LONG ISLAND OFFICE

INDICTMENT
CR-18 0179
Ct. No.

-against-

T. 18, U.S.C., §§ 371, 201(b)(1),
1343, 1346, 1001(a)(2), and
981(a)(1)(C); T. 21, U.S.C., § 853(p)

EDWIN D. FRAGOSO,

Defendant.

FEUERSTEIN, J.

-----X

THE GRAND JURY CHARGES:

TOMLINSON, M.J.

GENERAL ALLEGATIONS

At all times relevant to this Indictment:

1. The United States Navy Exchange at Mitchel Field in Garden City, New York (NEX) is a retail store owned and operated by the United States Navy (U.S. Navy) by and through the Navy Exchange Service Command (NEXCOM).

2. The NEX offers goods and services, including alcohol, to active and retired military personnel and certain designated civilians. The NEX operates much like any retail store with its goods showcased for sale and cash registers for purchases. However, the NEX is not open to the general public; rather, shoppers must be authorized personnel of the Armed Forces or affiliated organizations in order to make purchases.

3. Liquor sold at the NEX is not subject to New York State Excise Tax.

4. United States Department of Defense (DoD) Directive 1330.21, Armed Services Exchange Regulations, limits those eligible to shop at the NEX to enumerated personnel and their

family members with specified connections to the Uniformed Services, other DoD components, or affiliates.

5. The Mitchel Field NEX was the third-largest volume seller of NEX liquor in the world out of 226 total retail stores operated by NEXCOM in or about calendar year 2016. In 2017, the Mitchel Field NEX ranked twentieth in the world in sales of liquor.

6. Eric J. Jex (Jex), charged elsewhere, was an NEX supervisory sales associate and worked at the NEX from April 20, 2007, until December 13, 2016. As such, Jex was an employee of the United States Department of the Navy.

7. Jex was responsible for the security of cash, fixed assets, and merchandise inventory at the NEX. Jex also prepared, authorized, and processed retail transactions, which included submitting orders for liquor to be delivered from the NEX's Northeast Distribution Center in Suffolk, Virginia. Liquor orders were submitted and filled using a computer at the NEX that transmitted the orders electronically to NEXCOM in Virginia Beach, Virginia.

8. Pursuant to NEXCOM Instruction 1700.6E CH-1, NEX employees were required to physically check a customer's Armed Forces Identification Card or Uniformed Services Identification and Privilege Card before selling any alcoholic beverages in order to confirm a customer's eligibility to shop at the NEX in accordance with DoD Directive 1330.21.

9. Additionally, the NEX instructed its employees to verify birth dates of purchasers by checking the rear side of active duty members' DoD Common Access Card (CAC) or the back of retired active duty members' United States Uniformed Services Identification Card. NEX employees were also required to verify that the identification belonged to the person presenting it and to match the identification and descriptions of height, weight, and eye color with the person presenting it.

COUNT ONE
Conspiracy to Defraud the United States, to Commit Bribery, and to Commit Wire Fraud
(Title 18, United States Code, Section 371)

10. Paragraphs 1 through 9 of the General Allegations section of this Indictment are realleged and incorporated as though fully set forth herein.

11. Beginning at least as early as on or about November 13, 2015, and continuing through on or about December 13, 2016, within the Eastern District of New York and elsewhere,

EDWIN D. FRAGOSO,

did knowingly and willfully combine, conspire, confederate, and agree with Jex to:

(1) defraud the United States and to interfere with and obstruct its lawful governmental functions by deceit, craft, trickery, and dishonest means, including the U.S. Navy's and NEXCOM's retail sales of liquor; and

(2) to commit offenses against the United States; specifically:

a. to directly and indirectly, corruptly give, offer, and promise things of value, namely cash, to Jex, a public official, with the intent to influence Jex to make unauthorized sales of NEX liquor at significant discounts to FRAGOSO, in violation of Title 18, United States Code, Section 201(b)(1); and

b. to devise and intend to devise a scheme and artifice to defraud the NEX and the U.S. Navy of the honest services of Jex, an NEX supervisory sales associate and employee of the U.S. Navy, through bribery, and to obtain money and property from the NEX and the U.S. Navy by means of materially false and fraudulent pretenses, representations and promises and in doing so, to cause wire communications in interstate commerce to be transmitted, in violation of Title 18, United States Code, Sections 1343 and 1346.

Purposes of the Conspiracy

12. It was a purpose of the conspiracy to bribe Jex to use his official position with the NEX and the U.S. Navy to sell liquor with a retail value of approximately \$1.3 million at a discounted rate that FRAGOSO would not otherwise be eligible to purchase for his personal enrichment.

Manner & Means of the Conspiracy

The manner and means through which FRAGOSO carried out the conspiracy included, but were not limited to, the following:

13. FRAGOSO agreed with Jex to provide Jex with cash bribes in exchange for the ability to purchase discounted NEX liquor that FRAGOSO was otherwise ineligible to obtain. Jex and FRAGOSO generally determined the amount of the cash bribe to be paid to Jex for a particular transaction based upon the brands and quantities of liquor purchased. Jex sold FRAGOSO NEX liquor valued at approximately \$1.3 million for approximately \$870,000, resulting in a total discount of approximately \$426,000.

14. FRAGOSO and Jex communicated with each other by telephone, by text, or in person about the liquor available for sale at the NEX and the liquor FRAGOSO wished to purchase.

15. Jex collected and prepared FRAGOSO's liquor purchases either from the available stock at the NEX, or by e-mailing a special delivery request using a computer at the NEX that transmitted the order to a NEXCOM facility in Virginia Beach, Virginia. Orders transmitted to the NEXCOM facility in Virginia Beach, Virginia were filled and delivered from Suffolk, Virginia to the NEX. Jex entered FRAGOSO's final transactions into the NEX's computer system, which maintained a record of each transaction, including liquor type, liquor quantity, prices paid, and discounts received.

16. FRAGOSO paid for his liquor purchases in person, in cash at the NEX, and provided cash bribes to Jex at or around the NEX. FRAGOSO resold the discounted liquor purchased from the NEX for profit.

Overt Acts

In furtherance of the conspiracy and to effect its objects, FRAGOSO committed the following overt acts, among others, in the Eastern District of New York and elsewhere, with all dollar amounts alleged as approximations:

17. On or about December 2, 2015, FRAGOSO completed liquor purchases with Jex by paying \$31,610.64 for liquor worth \$56,422.80 after Jex gave FRAGOSO a discount of \$24,812.16. FRAGOSO provided Jex with cash to pay for the discounted liquor and to pay Jex a cash bribe. FRAGOSO was video recorded making a purchase at the NEX with cash.

18. On or about February 1, 2016, FRAGOSO completed liquor purchases with Jex by paying \$2,458.80 for liquor worth \$3,958.80 after Jex gave FRAGOSO a discount of \$1,500.00. FRAGOSO provided Jex with cash to pay for the discounted liquor and to pay Jex a cash bribe. FRAGOSO was video recorded at the NEX making a purchase from Jex with cash.

19. On or about February 11, 2016, FRAGOSO completed liquor purchases with Jex by paying \$7,577.85 for liquor worth \$12,511.21 after Jex gave FRAGOSO a discount of \$4,933.36. FRAGOSO provided Jex with cash to pay for the discounted liquor and to pay Jex a cash bribe. FRAGOSO and Jex were video recorded loading the liquor into FRAGOSO's van.

20. On or about February 12, 2016, FRAGOSO completed liquor purchases with Jex by paying \$6,871.62 for liquor worth \$12,651.96 after Jex gave FRAGOSO a discount worth \$5,780.34. FRAGOSO provided Jex with cash to pay for the discounted liquor and to pay Jex a cash bribe. FRAGOSO exchanged three calls with Jex and was video recorded at the NEX making a purchase from Jex with cash.

21. On or about March 4, 2016, FRAGOSO and Jex exchanged six telephone calls. Later that day, FRAGOSO completed liquor purchases with Jex by paying \$3,596.10 for liquor worth \$5,585.22 after Jex gave FRAGOSO a discount of \$1,989.12. FRAGOSO provided Jex with cash to pay for the discounted liquor and to pay Jex a cash bribe. FRAGOSO was video recorded at the NEX making a purchase from Jex with cash.

22. On or about May 6, 2016, FRAGOSO and Jex exchanged four telephone calls. Later that day, FRAGOSO completed liquor purchases with Jex by paying \$2,495.10 for liquor worth \$2,941.02 after Jex gave FRAGOSO a discount of \$445.92. FRAGOSO provided Jex with cash to pay for the discounted liquor and to pay Jex a cash bribe. FRAGOSO was video recorded at the NEX making a purchase from Jex with cash.

23. On or about May 10, 2016, FRAGOSO and Jex exchanged five telephone calls. Later that day, FRAGOSO completed liquor purchases with Jex by paying \$5,200.50 for liquor worth \$6,970.50 after Jex gave FRAGOSO a discount of \$1,770. FRAGOSO provided Jex with cash to pay for the discounted liquor and to pay Jex a cash bribe. FRAGOSO was video recorded at the NEX making a purchase from Jex with cash.

24. On or about June 10, 2016, FRAGOSO completed liquor purchases with Jex by paying \$27,360.30 for liquor worth \$44,112.78 after Jex gave FRAGOSO a discount of \$16,752.48. FRAGOSO provided Jex with cash to pay for the discounted liquor and to pay Jex a cash bribe. FRAGOSO exchanged seven calls with Jex and was video recorded at the NEX making a purchase from Jex with cash.

25. On or about July 27, 2016, FRAGOSO completed liquor purchases with Jex by paying \$26,512.20 for liquor worth \$34,156.20 after Jex gave FRAGOSO a discount of \$7,644. FRAGOSO provided Jex with cash to pay for the discounted liquor and to pay Jex a cash bribe.

FRAGOSO exchanged four calls with Jex and was video recorded at the NEX making a purchase from Jex with cash.

26. On or about August 9, 2016, FRAGOSO completed liquor purchases with Jex by paying \$7,123.50 for liquor worth \$9,418.50 after Jex gave FRAGOSO a discount of \$2,295. FRAGOSO provided Jex with cash to pay for the discounted liquor and to pay Jex a cash bribe. FRAGOSO exchanged ten calls with Jex and was video recorded at the NEX making a purchase from Jex with cash.

27. On or about October 19, 2016, at 12:06 p.m., Jex texted FRAGOSO the following names of liquors and numerals: "Ciroc 4 Berry 6 Peach 12 Pine 7 Apple 30."

28. On December 13, 2016, Jex sold FRAGOSO 100 cases of Hennessy for \$40,190 in cash. FRAGOSO provided Jex with a cash bribe in the amount of \$1,850 for this purchase.

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

COUNT TWO
Bribery of a Public Official
(Title 18, United States Code, Section 201(b)(1))

29. The allegations in paragraphs 1 through 28 are realleged and incorporated as if set forth fully in this paragraph.

30. Beginning on or about November 13, 2015, and continuing until on or about December 13, 2016, in the Eastern District of New York,

EDWIN D. FRAGOSO,

did, directly and indirectly, corruptly give, offer, and promise things of value, namely cash, to Jex, a public official, with the intent to influence Jex to make unauthorized sales of NEX liquor at significant discounts to FRAGOSO, in violation of Title 18, United States Code, Section 201(b)(1).

COUNTS THREE THROUGH FIVE
Wire Fraud
(Title 18, United States Code, Sections 1343 & 1346)

31. The allegations in paragraphs 1 through 30 are realleged and incorporated as if set forth fully in this paragraph.

32. On or about the dates listed below, in the Eastern District of New York,

EDWIN D. FRAGOSO,

devised and intended to devise a scheme and artifice to defraud the NEX and the U.S. Navy of the honest services of Jex, an NEX supervisory sales associate, through bribery, and to obtain money and property from the NEX and the U.S. Navy by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing the scheme and artifice to defraud and deprive, did knowingly transmit and cause to be transmitted in interstate commerce, by means of wire communications, certain signs and signals, as more specifically set forth in Counts Three through Five of this Indictment.

The Scheme and Artifice to Defraud

33. The objects of the scheme and artifice to defraud were for FRAGOSO and Jex to defraud the NEX and the U.S. Navy of the honest services of Jex through bribery, and to unlawfully enrich themselves by obtaining money and property from the NEX and the U.S. Navy under the false and fraudulent pretenses and representations that FRAGOSO was authorized to make liquor purchases at the NEX and that FRAGOSO was eligible for discounted prices on liquor sales.

Manner and Means of the Scheme to Defraud

34. Paragraphs 13 through 16 of the Manner and Means of the conspiracy charged in Count One of this indictment are hereby incorporated by reference as though fully set forth herein, as Manner and Means of the scheme to defraud.

Acts in Furtherance of the Scheme and Artifice to Defraud

35. Paragraph 15 and paragraphs 17 through 28 of the Overt Acts of the conspiracy charged in Count One of this indictment are hereby incorporated by reference as though fully set forth herein, as Acts In Furtherance of the Scheme and Artifice to Defraud.

Use of Interstate Wire Communications

36. On or about each of the dates listed in the table below, in the Eastern District of New York and elsewhere,

EDWIN D. FRAGOSO,

for the purpose of executing and attempting to execute the above described scheme and artifice to defraud, knowingly transmitted and caused to be transmitted by means of wire communications in interstate commerce, the following writings and signals, as more specifically described below:

COUNT	DATE OF WIRE	DESCRIPTION OF WIRE COMMUNICATION
3	June 22, 2016	Special Order Delivery Request E-mail sent from Garden City, New York to Virginia Beach, Virginia for liquor.
4	July 25, 2016	Special Order Delivery Request E-mail sent from Garden City, New York to Virginia Beach, Virginia for liquor.
5	August 17, 2016	Special Order Delivery Request E-mail sent from Garden City, New York to Virginia Beach, Virginia for liquor.

Each of the wire communications listed above constituting a separate and distinct violation of Title 18, United States Code, Sections 1343 and 1346.

**COUNT SIX
False Statement
(Title 18, United States Code, Section 1001)**

37. The allegations in paragraphs 1 through 36 are realleged and incorporated as if set forth fully in this paragraph.

38. On or about December 13, 2016, in the Eastern District of New York,

EDWIN D. FRAGOSO,

did willfully and knowingly make a materially false, fictitious, and fraudulent statement and representation in a matter within the jurisdiction of the executive branch of the Government of the United States, by stating that he went to the NEX with S.R., an active duty military service member with NEX access who completed liquor purchases on his behalf, and that FRAGOSO never paid for anything, during an interview with federal agents at Freeport, New York, in the Eastern District of New York. The statements and representations were false because, as FRAGOSO then and there knew, S.R. did not accompany him to the NEX, sponsorship to shop at the NEX is not possible, and FRAGOSO did pay for liquor purchases.

In violation of Title 18, United States Code, Section 1001(a)(2).

FORFEITURE ALLEGATION

39. The allegations contained in paragraphs 1 through 9 and 31 through 36 of this Indictment are realleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

Pursuant to Federal Rule of Criminal Procedure 32.2(a),

EDWIN D. FRAGOSO,

is notified that, upon conviction of any of the offenses alleged in Counts Three through Five, he shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, any property, real or personal, which he obtained directly or indirectly and which constitutes or is derived from proceeds traceable to the offenses. The property to be forfeited includes, but is not limited to, approximately \$426,000.00, representing the total amount of proceeds traceable, directly or indirectly, to the offenses in violation of Title 18, United States Code, Section 1343.

Indictment, United States of America v. Edwin D. Fragoso

If any of the above-described forfeitable property, as a result of any act or omission of FRAGOSO:

- 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 that cannot be divided without

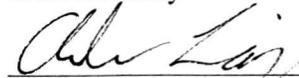
difficulty, the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

All pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

ANNALOU TIROL
ACTING CHIEF
PUBLIC INTEGRITY SECTION



Luke Cass
Trial Attorney



Andrew Laing
Trial Attorney