

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

District of North Dakota

United States of America)

v.)

RANDALL JUDE PHELAN)

Case No. 1:20-mj-337

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of 2016-2018 in the county of McKenzie in the District of North Dakota, the defendant(s) violated:

Code Section	Offense Description
18 USC 371	Conspiracy
18 USC 666(a)(1)(B)	Bribery Concerning Programs Receiving Federal Funds

This criminal complaint is based on these facts:

See affidavits.

Continued on the attached sheet.

[Handwritten Signature]
 Complainant's signature
 O'Connell, Jacob W.
 Printed name and title
 Special Agent (FBI)
[Handwritten Signature]
 Judge's signature
 Alice R. Senechal
 Printed name and title
 U.S. Magistrate Judge

via telephone.

Sworn to before me and signed in my presence

Date: 07/28/2020

City and state: Fargo, North Dakota (via Telephone)

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Special Agent Jacob W. O'Connell, being duly sworn on oath, depose and state as follows:

1. I am a Special Agent of the Federal Bureau of Investigation (FBI) and have been employed in such capacity since 2002. I am currently assigned to the FBI Resident Agency in Bismarck, North Dakota. My duties include the investigation of fraud and public corruption crimes occurring within the District of North Dakota. Since joining the FBI, I have received training in general law enforcement and criminal investigations, and specific training in public corruption investigations. I have participated in investigations involving financial fraud and other criminal activity both within, and outside, the external boundaries of the Fort Berthold Indian Reservation (FBIR) located within the District of North Dakota.

2. As a Special Agent with the FBI, I have authority to investigate violations of federal law. I also have authority to seek and execute federal process, to include criminal complaints. I make this affidavit in support of a criminal complaint charging RANDALL JUDE PHELAN (PHELAN) and DELVIN REEVES (REEVES) with the offenses of Conspiracy, in violation of Title 18, United States Code, Section 371; and Bribery Concerning Programs Receiving Federal Funds, in violation of Title 18, United States Code, Section 666(a)(1)(B). Specifically, between 2013 and 2020, within the District of North Dakota and elsewhere, the defendants RANDALL JUDE PHELAN and DELVIN REEVES, being agents of an Indian tribal government receiving greater than \$10,000 in federal benefits, did conspire to and did corruptly solicit and demand, accept and agree to accept things of value, intending to be influenced and rewarded in connection with any business, transaction, and series of transactions of the Three Affiliated Tribes (TAT) of the Mandan, Hidatsa, and Arikara Nation (MHA Nation) involving \$5,000 or more.

3. The information in this affidavit is based on my personal knowledge and information provided to me by other law enforcement officers and by individuals interviewed during the course of this investigation. The information in this affidavit is provided for the limited purpose of establishing probable cause for a criminal complaint. As this affidavit is being submitted for the limited purpose of securing a criminal complaint, I have not included every fact known to me concerning this investigation. Where conversations between individuals are related, they are presented in sum and substance and are not verbatim.

PROBABLE CAUSE

4. The FBIR, which is the home of the MHA Nation, is divided into six segments: the West Segment, the North Segment, the Four Bears Segment, the Parshall Segment, the White Shield Segment, and the Twin Buttes Segment. Each segment elects one representative on the MHA Nation Tribal Business Council (TBC), the governing body of the TAT. A seventh seat is held by the MHA Nation's elected Chairman. Funding requests, budget approval, legislative matters, and special projects approvals all fall under the purview of the TBC. In all years relevant to this complaint, the MHA Nation received in excess of \$10,000 in federal benefits through programs of the United States Government.

5. Each segment receives an annual, multi-million dollar allocation of funds from the TAT General Fund. Many segments, including the West Segment, deposit this allocation into the segment's economic development corporation (EDC) account. Expenditures from a segment's allocation are not subject to TBC oversight, and the TBC representative has significant discretion as to the spending of the segment's allocation.

6. Since in or around November 2012, PHELAN has been the elected TBC representative for the West Segment. Shortly after PHELAN's election, he appointed REEVES to

a position as a project manager in the West Segment, employed by the TAT and answering to PHELAN. REEVES also serves on the West Segment's EDC board. Both PHELAN and REEVES are enrolled members of the MHA Nation. At all times relevant to this complaint, PHELAN and REEVES acted as agents of the MHA Nation tribal government.

7. CC-1 is the owner of a business providing construction services on the FBIR since in or around 2012. CC-1 has pleaded guilty pursuant to an information to one count of Bribery Concerning Programs Receiving Federal Funds, in violation of Title 18, United States Code, Section 666(a)(2), in connection with bribes and kickbacks paid to a former TBC official. CC-1 is cooperating with the government's investigation with the objective, at least in part, of receiving a reduced sentence.

8. From in or around 2013 and continuing through 2020, PHELAN and REEVES corruptly solicited and accepted bribes and kickbacks from CC-1 with the intent to be influenced and rewarded in connection with CC-1's business's operation on the FBIR. Analysis conducted by the FBI's forensic accountants of subpoenaed bank records shows that between in or around January 2012 and January 2020, CC-1's business was paid over \$17,250,000 by the MHA Nation and its subsidiary segments in connection with business conducted on the FBIR. In particular, CC-1 was paid at least \$7,489,000 by checks issued from a bank account maintained by the West Segment EDC between in or about February 2014 and in or about October 2019. Payments for projects within a segment may also be paid for out of the centralized TAT General Fund.

9. Beginning in or around 2013, PHELAN, REEVES, and CC-1 knowingly devised a scheme to defraud the MHA Nation of money by causing and facilitating the submission and payment of false and fraudulent invoices for construction and other projects paid for with tribal funds in exchange for the public officials' receiving bribes and kickbacks.

10. PHELAN demanded that bribes and kickbacks be paid to him in cash, and CC-1 complied. CC-1 told the FBI that, as of December 2018, he had provided PHELAN with over one million dollars in cash bribes and kickbacks. In April 2018, prior to being approached by the FBI, CC-1 began tracking the cash payments to PHELAN in a handwritten ledger. A photocopy of the ledger provided by CC-1 to the government in May 2019 reflects fifty-nine payments between April 25, 2018 and May 6, 2019 totaling approximately \$271,900.

11. Analysis conducted by the FBI's forensic accountants of subpoenaed bank records shows that CC-1 paid REEVES approximately \$633,000 via sixty-seven separate payments from in or around August 2013 through in or around October 2019. The payments included seven wire transfers, fifty-seven checks, and seven cashier's checks, all originating from bank accounts controlled by CC-1. The payments were deposited into bank accounts controlled by REEVES at First International Bank, Cornerstone Bank, and Gate City Bank.

12. Financial analysis further shows that a number of the payments to REEVES coincided closely — often on the same day — with payments to CC-1 from the West Segment EDC account, indicating that the payments to REEVES were likely kickbacks from the West Segment payments. (Unless otherwise noted, checks were dated the same date as they were deposited.)

- a. On or about August 11, 2017, a West Segment EDC check for \$120,000 was deposited into an account controlled by CC-1. Also on or about August 11, 2017, a \$5,000 check dated August 10, 2017 from an account controlled by CC-1 was deposited into an account controlled by REEVES. On or about August 10, 2017, a \$10,000 check from an account controlled by CC-1 was deposited into an account controlled by REEVES.

- b. On or about August 23, 2017, a West Segment EDC cashier's check for \$51,400 was deposited into an account controlled by CC-1. On or about August 24, 2017, a \$5,000 check dated August 23, 2017 from an account controlled by CC-1 was deposited into an account controlled by REEVES.
- c. On or about September 8, 2017, a West Segment EDC cashier's check for \$47,000 was deposited into an account controlled by CC-1. On or about September 11, 2017, a \$5,000 check dated September 9, 2017 from an account controlled by CC-1 was deposited into an account controlled by REEVES.
- d. On or about September 19, 2017, a West Segment EDC cashier's check for \$200,000 was deposited into an account controlled by CC-1. Also on or about September 19, 2017, a \$20,000 check dated September 18, 2017 from an account controlled by CC-1 was deposited into an account controlled by REEVES.
- e. On or about September 29, 2017, two West Segment EDC cashier's checks, one for \$200,000 and one for \$30,600, were deposited into an account controlled by CC-1. Also on or about September 29, 2017, a \$9,000 cashier's check from an account controlled by CC-1 were deposited into an account controlled by REEVES.
- f. On or about October 30, 2017, a West Segment EDC cashier's check for \$450,000 dated October 28, 2017 was deposited into an account controlled by CC-1. On or about October 31, 2017, two \$5,000 checks dated October 28, 2017 from an account controlled by CC-1 were deposited into an account controlled by REEVES.

- g. On or about November 7, 2017, a West Segment EDC cashier's check for \$350,000 was deposited into an account controlled by CC-1. Also on or about November 7, 2017, a \$20,000 check from an account controlled by CC-1 was deposited into an account controlled by REEVES.
- h. On or about December 4, 2017, a West Segment EDC cashier's check for \$275,000 dated December 2, 2017 was deposited into an account controlled by CC-1. Also on or about December 4, 2017, a \$5,000 check and a \$25,000 check, both dated December 2, 2017, from an account controlled by CC-1 were deposited into an account controlled by REEVES.
- i. On or about January 18, 2018, a West Segment EDC cashier's check for \$300,000 was deposited into an account controlled by CC-1. On or about January 19, 2018, a \$15,000 check dated January 17, 2018 from an account controlled by CC-1 was deposited an account controlled by REEVES.

13. On or about January 24, 2019, CC-1 and PHELAN discussed that REEVES had requested money from CC-1, and PHELAN commented that he intended to tell REEVES to take cash, because checks would "get you in trouble."

14. CC-1 regularly fraudulently inflated the amount of project bids and invoices in order to cover the costs of providing bribes and kickbacks to PHELAN and REEVES.

15. On or about May 6, 2019, CC-1 and PHELAN discussed a potential project for the construction of duplex apartments, similar to a project that CC-1 built in the White Shield Segment for \$1.6 million. CC-1 explained to PHELAN that the \$1.6 million only covered materials, and therefore the West Segment project would need to be awarded for \$1.8 million because otherwise "there's no money to play around."

16. Some construction projects in the West Segment were purportedly awarded through a competitive bidding process, such as if, for example, the project required funding from the centralized TAT General Fund and therefore approval by the TBC. In reality, PHELAN, REEVES, and CC-1 routinely conspired to make sure that CC-1 would be awarded the project regardless of whether the project was purportedly put through a bidding process. For example:

- a. On or about February 3, 2019, CC-1 and PHELAN discussed that PHELAN told REEVES to tell the West Segment EDC that a competitive bidding process had been held and that CC-1 had been the winner. PHELAN then instructed that REEVES and CC-1 would “come up with three bids.”
- b. On or about May 13, 2019, REEVES complained to CC-1 that another TAT official was asking to see the plans from a purported competitive bidding process in which CC-1 had put in “three bogus bids” in addition to the real bid, and therefore the documents did not exist to show the TAT official.
- c. On or about August 16, 2019, PHELAN assured CC-1 that notwithstanding the announcement of a competitive bidding process, CC-1 was “guaranteed” to get the job because REEVES had the votes on the EDC to award it to CC-1 even if he did not turn out to be the lowest bidder.

17. On or about October 15, 2019, REEVES accompanied CC-1 to a Gate City Bank branch, where CC-1 had bank accounts. While at the bank, CC-1 deposited a check and withdrew \$5,000 in cash for PHELAN, which he delivered later that day. REEVES requested that CC-1 write three checks for \$8,000 each to “Grey Wolf Construction,” a company owned by REEVES, and to date them one week apart. Analysis conducted by the FBI’s forensic accountants of

subpoenaed bank records shows that REEVES deposited three \$8,000 checks into a Grey Wolf Construction account at First International Bank on October 15, October 22, and October 29.

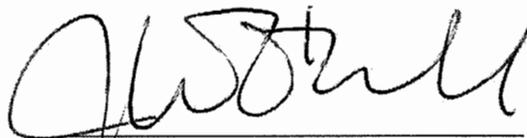
18. Projects awarded to CC-1 included individual home renovations and/or repairs for enrolled members residing in the West Segment, work on the West Segment powwow ground, construction of the duplex apartments referenced above in paragraph 15, and other construction projects.

19. In addition to awarding certain projects within his discretion to CC-1, PHELAN also regularly advocated for CC-1 in connection with projects requiring centralized TAT funding and therefore TBC approval. PHELAN regularly signed paperwork authorizing CC-1's work and/or the payment of CC-1's invoices. CC-1 routinely met with PHELAN to obtain his signature on such paperwork and provided PHELAN with cash, usually in thousand-dollar increments, at the same time. As an influential member of the West Segment EDC, REEVES regularly advocated for CC-1 on projects requiring EDC approval. REEVES also facilitated obtaining approvals and/or processing invoices by TAT officials.

20. On or about June 30, 2020, your affiant conducted separate interviews of PHELAN and REEVES at their respective residences. PHELAN and REEVES were both asked, among other things, about their dealings with CC-1, and both denied accepting bribes or kickbacks or engaging in any other illegal activity.

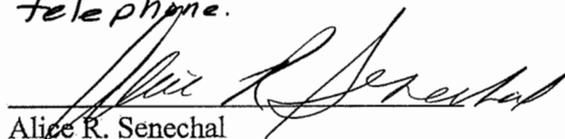
21. Based on my training and experience and the facts as set forth in this affidavit, your affiant respectfully submits that there is probable cause to believe that RANDALL JUDE PHELAN and DELVIN REEVES have violated Title 18, United States Code, Section 371 (Conspiracy); and Title 18, United States Code, Section 666(a)(1)(B) (Bribery Concerning Programs Receiving Federal Funds), in the District of North Dakota and elsewhere, and therefore

a warrant should issue for their arrests. Because public filing of this document could result in a risk of flight by the defendants, as well as jeopardize the government's ongoing investigation by notifying confederates and co-conspirators of the pending investigation, your affiant respectfully requests that this complaint, as well as any arrest warrants issued in connection with this complaint, be filed under seal.



Special Agent Jacob W. O'Connell
Federal Bureau of Investigation

Subscribed to and sworn pursuant to Fed. R. Crim. P. 4.1 on this 28th day of July, 2020, via telephone.



Alice R. Senechal
United States Magistrate Judge