

NS:NR
F.#2017R00577

FILED
CLERK

2018 FEB 22 PM 4:06

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

-----X

UNITED STATES OF AMERICA

INDICTMENT

- against -

Cr. No.

CR 18 -

97

MICHAEL FODER,

(T. 18, U.S.C., §§ 1512(c)(2), 1623, 2 and
3551 et seq.)

Defendant.

CHEN, J.

-----X

THE GRAND JURY CHARGES:

REYES, M.J.

INTRODUCTION TO ALL COUNTS

1. At all times relevant to this Indictment, unless otherwise indicated:

I. The Defendant

2. The defendant MICHAEL FODER was employed as a detective by the New York City Police Department. Between October 2015 and December 2016, FODER was assigned to the 70th Precinct in Brooklyn, New York.

II. Perjury and Obstruction of Justice

3. On or about December 29, 2016, the defendant MICHAEL FODER testified under oath at a hearing (the "Hearing") held in connection with a federal criminal prosecution of three individuals charged with, among other things, robbery and carjacking (hereinafter, the "Case"), which was pending in the United States District Court for the Eastern District of New York. FODER testified under oath about the procedures he

purportedly followed in having a carjacking victim, an individual whose identity is known to the Grand Jury (the "Victim"), identify two of the defendants in the Case.

4. In an attempt to conceal the fact that he had falsified documentation relating to the purported identifications made by the Victim, the defendant MICHAEL FODER lied while under oath during the Hearing in response to questions concerning the identification procedures, including: (a) falsely testifying about when the identification procedures had occurred and (b) falsely claiming that he had witnessed the Victim sign the identifications.

COUNT ONE
(Perjury)

5. The allegations contained in paragraphs one through four are realleged and incorporated by reference as if fully set forth in this paragraph.

6. On or about December 29, 2016, within the Eastern District of New York, the defendant MICHAEL FODER, while under oath in a proceeding before a court of the United States, to wit: a hearing conducted in United States v. Sasha Honore, et al., Criminal Docket No. 16-114 (ERK), a case pending in the United States District Court for the Eastern District of New York, did knowingly and intentionally make one or more false material declarations, to wit: FODER gave false testimony, including the following underlined testimony:

(a) Q: I am directing your attention specifically to November 27th of 2015. Did you conduct any photo arrays on that date?

A: Yes.

Q: I'm placing before you a document I've marked, this will be page 3 of Government's Exhibit 6. Detective, do you recognize this document?

A: Yes.

Q: What is it?

A: It's my photo array that I conducted.

Q: On November 27th, 2016 [sic]?

A: Yes, sir.

* * *

(b) Q: And today you told us about a photo array that took place on November 27th, is that correct?

A: Correct.

* * *

(c) Q: You said that you showed that photo array on November 27th, is that correct?

A: Correct.

Q: And that the complainants [sic] looked at the photograph for about two minutes?

A: Two minutes, yes, sir.

Q: Did you note that anywhere?

A: No, sir.

Q: And this is again your recollection?

A: Yes.

Q: Did the complainant indicate a level of confidence with respect to the identification of the person he identified on November 27th?

A: Yes.

Q: What level of confidence did he indicate?

A: He was very sure about which guy got out of the back seat of the car and got into the front seat.

(Title 18, United States Code, Sections 1623 and 3551 et seq.)

COUNT TWO
(Perjury)

7. The allegations contained in paragraphs one through four are realleged and incorporated by reference as if fully set forth in this paragraph.

8. On or about December 29, 2016, within the Eastern District of New York, the defendant MICHAEL FODER, while under oath in a proceeding before a court of the United States, to wit: a hearing conducted in United States v. Sasha Honore, et al., Criminal Docket No. 16-114 (ERK), a case pending in the United States District Court for the Eastern District of New York, did knowingly and intentionally make one or more false material declarations, to wit: FODER gave false testimony, including the following underlined testimony:

(a) Q: Now directing your attention, Detective, to February 14, 2016. Did you administer any photo arrays on that date?

A: Yes.

Q: And who was a witness to whom you were administering an array?

A: Excuse me?

Q: Who were you showing the array to?

A: The victim involved in this [the Victim].

Q: Same individual.

A: Yes sir.

* * *

(b) Q: There appears to be a signature underneath that photograph. Do you recognize that signature?

A: Yes, sir.

Q: Whose is that?

A: The victim, [Victim].

Q: Same signature that we saw on the last array?

A: Yes.

Q: Did you watch him sign the document?

A: I did.

* * *

(c) Q: [I] would like to start with February 14, 2016. That's the day you presented a photo array to the driver of the livery cab, correct?

A: Correct.

Q: Now how was it that he was contacted on that day and knew to come wherever it was the photo array was conducted?

A: It had to have been telephone.

Q: And where was it conducted, by the way, which precinct was it at?

A: The 70th, sir.

(Title 18, United States Code, Sections 1623 and 3551 et seq.)

COUNT THREE

(Obstruction of Official Proceeding)

9. The allegations contained in paragraphs one through four are realleged and incorporated by reference as if fully set forth in this paragraph.

10. On or about December 29, 2016, within the Eastern District of New York, the defendant MICHAEL FODER did knowingly, intentionally and corruptly obstruct and impede and attempt to obstruct and impede an official proceeding, to wit: United States v. Sasha Honore, et al., Criminal Docket No. 16-114 (ERK), a proceeding before the United States District Court for the Eastern District of New York.

(Title 18, United States Code, Sections 1512(c)(2), 2 and 3551 et seq.)

A TRUE BILL



FOREPERSON


RICHARD P. DONOGHUE
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

F. #2017R0577
FORM DBD-34
JUN. 85

No. _____

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

vs.

MICHAEL FODER,

Defendant.

INDICTMENT

(T. 18, U.S.C., §§ 1512(c)(2), 1623, 2 and 3551 et seq.)

A true bill

[REDACTED]

Foreperson

Filed in open court this _____ day,

of _____ A.D. 2018

Clerk

Bail, \$ _____

Nathan Reilly,
Assistant U.S. Attorney (718) 254-6196