

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

AUG 27 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

VICTOR KEARNEY and
ROBERT FISER,

Defendants.

MITCHELL R. ELFERS
CLERK

CRIMINAL NO. 19-2848-JB

Count 1: 18 U.S.C. § 371: Conspiracy;

Count 2: 26 U.S.C. § 7206(2): Aiding
and Assisting in Preparation of False and
Fraudulent Return, Statement, or Other
Document;

Count 3: 26 U.S.C. § 7206(1): Making
and Subscribing False Return, Statement,
or Other Document.

INDICTMENT

The Grand Jury charges:

INTRODUCTION

1. The defendant, **VICTOR KEARNEY** (hereinafter, "**KEARNEY**"), was, at all times relevant to this indictment, a beneficiary of the Mary Pat Abruzzo-Kearney Testamentary Trust B and C. **KEARNEY** received income from the trusts on an annual basis.

2. The defendant, **ROBERT FISER** (hereinafter, "**FISER**"), was, at all times relevant to this indictment, a licensed attorney in the State of New Mexico. **FISER** specialized in tax law and prepared federal income tax returns for clients, including **KEARNEY**.

Count 1

3. From on or about October 20, 2009, to on or about November 4, 2016, in Bernalillo County, in the District of New Mexico, and elsewhere, the defendants, **KEARNEY** and **FISER**, knowingly, unlawfully, and willfully combined, conspired, confederated, agreed,

and acted interdependently with one another and with others known and unknown to the Grand Jury to defraud the United States for the purpose of impeding, impairing, obstructing, and defeating the lawful Government function of the Internal Revenue Service of the Treasury Department in the ascertainment, computation, assessment, and collection of the revenue: to wit, income taxes, as further set forth below.

Manner and Means

4. The manner and means by which **KEARNEY** and **FISER** sought to accomplish the objectives of the conspiracy included, among other things, the following:

5. Preparing and signing federal income tax returns substantially underreporting the taxable income of **KEARNEY**;

6. Filing federal income tax returns with the Internal Revenue Service substantially underreporting the taxable income of **KEARNEY**;

7. Making false statements about federal income tax returns for **KEARNEY**;

8. Communicating about the preparation and filing of false tax returns and the concealment of such criminal conduct.

OVERT ACTS

9. On or about October 20, 2009, **FISER** signed a 2007 U.S. Individual Income Tax Return, Form 1040, failing to report taxable income that **KEARNEY** received from the Mary Pat Abruzzo-Kearney Testamentary Trust B and C.

10. On or about October 23, 2009, **KEARNEY** signed a 2007 U.S. Individual Income Tax Return, Form 1040, failing to report that **KEARNEY** received taxable income from the Mary Pat Abruzzo-Kearney Testamentary Trust B and C.

11. On or about November 2, 2009, **FISER** wrote a letter to the former spouse of **KEARNEY** substantially understating the amount of income **KEARNEY** would receive from Mary Pat Abruzzo-Kearney Testamentary Trust B and C in 2009.

12. On or about August 3, 2011, **FISER** signed a 2008 U.S. Individual Income Tax Return, Form 1040, failing to report taxable income that **KEARNEY** received from the Mary Pat Abruzzo-Kearney Testamentary Trust B and C.

13. On or about August 3, 2011, **KEARNEY** signed a 2008 U.S. Individual Income Tax Return, Form 1040, failing to report that **KEARNEY** received taxable income from the Mary Pat Abruzzo-Kearney Testamentary Trust B and C.

14. On or about May 29, 2012, **FISER** obtained wage and income transcripts from the Internal Revenue Service to determine what income the Internal Revenue Service had on record for **KEARNEY** for 2009-2011.

15. On or about June 12, 2012, **FISER** signed a 2009 U.S. Individual Income Tax Return, Form 1040, failing to report taxable income that **KEARNEY** received from the Mary Pat Abruzzo-Kearney Testamentary Trust B and C.

16. On or about June 17, 2012, **KEARNEY** signed a 2009 U.S. Individual Income Tax Return, Form 1040, failing to report that **KEARNEY** received taxable income from the Mary Pat Abruzzo-Kearney Testamentary Trust B and C.

17. On or about June 12, 2012, **FISER** signed a 2010 U.S. Individual Income Tax Return, Form 1040, failing to report taxable income that **KEARNEY** received from the Mary Pat Abruzzo-Kearney Testamentary Trust B and C.

18. On or about June 17, 2012, **KEARNEY** signed a 2010 U.S. Individual Income Tax Return, Form 1040, failing to report that **KEARNEY** received taxable income from the Mary Pat Abruzzo-Kearney Testamentary Trust B and C.

19. On or about September 4, 2013, **FISER** signed a 2011 U.S. Individual Income Tax Return, Form 1040, failing to report taxable income that **KEARNEY** received from the Mary Pat Abruzzo-Kearney Testamentary Trust B and C.

20. On or about September 6, 2013, **KEARNEY** signed a 2011 U.S. Individual Income Tax Return, Form 1040, failing to report that **KEARNEY** received taxable income from the Mary Pat Abruzzo-Kearney Testamentary Trust B and C.

21. On or about November 20, 2013, **FISER** signed a 2009 Amended U.S. Individual Income Tax Return, Form 1040X, falsely stating that **FISER** signed the return on June 1, 2013.

22. On or about November 20, 2013, **FISER** signed a 2010 Amended U.S. Individual Income Tax Return, Form 1040X, falsely stating that **FISER** signed the return on June 1, 2013.

23. On or about November 20, 2013, **FISER** signed a 2011 Amended U.S. Individual Income Tax Return, Form 1040X, falsely stating that **FISER** signed the return on June 1, 2013.

24. On or about November 20, 2013, **FISER** signed a 2012 U.S. Individual Income Tax Return, Form 1040, falsely stating that **FISER** signed the return on June 1, 2013.

25. On or about October 1, 2014, **FISER** sent an email message to **KEARNEY** advising **KEARNEY** not to contact the Internal Revenue Service about the failure to file tax returns.

26. On or about September 2, 2016, **KEARNEY** and **FISER** had a conversation about **KEARNEY** not filing income tax returns.

27. On or about September 2, 2016, **KEARNEY** falsely stated under oath at a deposition that he believed **FISER** had obtained extensions from the Internal Revenue Service granting **KEARNEY** permission to file late income tax returns when **KEARNEY** then and there knew **FISER** had not obtained such extensions.

28. On September 2, 2016, **KEARNEY** falsely stated under oath at a deposition that he believed **FISER** filed **KEARNEY**'s federal income tax returns for 2008-2014 electronically when **KEARNEY** then and there knew that those income tax returns were actually filed by mail.

29. On September 2, 2016, **KEARNEY** falsely stated under oath at a deposition that he did not mail any federal tax returns to the Internal Revenue Service from 2008 to 2016 when **KEARNEY** then and there knew that he had mailed tax returns to the Internal Revenue Service in 2008 or later.

30. On or about November 4, 2016, **FISER** falsely stated under oath at a deposition that **FISER** and **KEARNEY** did not report income from the Mary Pat Abruzzo-Kearney Testamentary Trust B and C in **KEARNEY**'s original tax returns for 2008-2011 because they intended to file amended returns after filing those original returns when **FISER** then and there knew they had no such intention.

In violation of 18 U.S.C. § 371.

Count 2

31. On or about September 4, 2013, in the District of New Mexico and elsewhere, the defendant, **ROBERT FISER**, willfully aided and assisted in, and procured, counseled, and advised the preparation and presentment to the Internal Revenue Service, of a U.S. Individual Income Tax Return, Form 1040, of **VICTOR KEARNEY** for the calendar year 2011. The return was false and fraudulent as to a material matter, in that the return represented that the

taxable income for **VICTOR KEARNEY** for the calendar year 2011 was the sum of -\$319,297, and that the amount of tax due and owing thereon was the sum of \$0.00, whereas, as the defendant, **FISER**, then and there knew, the taxable income of **VICTOR KEARNEY** for the calendar year 2011 was substantially in excess of the reported amount, upon which additional taxable income there was owing to the United States of America.



In violation of 26 U.S.C. § 7206(2).

Count 3

32. On or about September 6, 2013, in the District of New Mexico and elsewhere, the defendant, **VICTOR KEARNEY**, willfully made and subscribed a U.S. Individual Income Tax Return, Form 1040, which was verified by a written declaration that it was made under the penalties of perjury and which he did not believe to be true and correct as to every material matter. That U.S. Individual Income Tax Return, Form 1040, which was prepared and signed in the District of New Mexico and elsewhere and was filed with the Internal Revenue Service, stated that the taxable income for **KEARNEY** for calendar year 2011 was the sum of -\$319,297, and that the amount of tax due and owing thereon was the sum of \$0.00, whereas, as he then and there knew his taxable income for the calendar year 2011 was substantially in excess of the reported amount, upon which additional taxable income there was owing to the United States of America.

In violation of 26 U.S.C. § 7206(1).

A TRUE BILL:


Assistant United States Attorney
 8/21/2019 11:40 AM

/s/ _____
FOREPERSON OF THE GRAND JURY