

FILED

MAY 24 2022

Clerk, U. S. District Court
Eastern District of Tennessee
At Chattanooga

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA**

UNITED STATES OF AMERICA)
)
v.)
)
ANTONIO DEWAYNE MENIFEE)

1:22-cr-69

McDonough | Steger

INDICTMENT

COUNT ONE

The Grand Jury charges that on or about September 24, 2021, in the Eastern District of Tennessee, the defendant, ANTONIO DEWAYNE MENIFEE, did knowingly and intentionally possess with intent to distribute a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(C).

COUNT TWO

**Wire Fraud
(18 U.S.C. § 1343)**

A. Background

1. At all times material to this indictment, the defendant, ANTONIO DEWAYNE MENIFEE, resided in the Eastern District of Tennessee.

2. At all times material to this information, MENIFEE claimed to be the primary owner of a fictitious construction business that was headquartered in the Eastern District of Tennessee.

Paycheck Protection Program

3. The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") was a federal law enacted in or around March 2020 and designed to provide emergency financial

assistance to the millions of Americans who were suffering the economic effects by the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of up to \$349 billion in forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program (“PPP”). In or around April 2020, Congress authorized over \$300 billion in additional PPP funding. The purpose of loans issued under the PPP was to enable small businesses suffering from the economic downturn to continue to pay salaries or wages to their employees.

4. The PPP was administered by the Small Business Administration (“SBA”), which promulgated regulations concerning eligibility for a PPP loan. Eligible businesses seeking a loan under the PPP could apply for such a loan through a federally insured depository institution.

5. To obtain a PPP loan, a qualifying business must submit a PPP loan application, which is signed by an authorized representative of the business. The PPP loan application requires the business (through its authorized representative) to acknowledge the program rules and make certain affirmative certifications to be eligible to obtain the PPP loan. In the PPP loan application, the small business (through its authorized representative) must state, among other things, its: (a) average monthly payroll expenses; and (b) number of employees. These figures are used to calculate the amount of money the small business is eligible to receive under the PPP. In addition, businesses applying for a PPP loan must include documentation showing their payroll expenses and other information as part of the application.

6. A PPP loan application must be processed by a participating lender. If a PPP loan application is approved, the participating lender funds the PPP loan using its own monies, which are 100% guaranteed by the SBA. Data from the application, including information

about the borrower, the total amount of the loan, and the listed number of employees, is transmitted by the lender to the SBA in the course of processing the loan.

7. PPP loan proceeds must be used by the business on certain permissible expenses: payroll costs, interest on mortgages, rent, and utilities. The PPP allows the interest and principal on the PPP loan to be entirely forgiven if the business spends the loan proceeds on these expense items within a designated period of time after receiving the proceeds and uses a certain amount of the PPP loan proceeds on payroll expenses.

8. The proceeds of a PPP loan were not permitted to be used to purchase consumer goods, automobiles, personal residences, clothing, jewelry, to pay the borrower's personal federal income taxes, or to fund the borrower's ordinary day-to-day living expenses unrelated to the specified authorized expenses.

B. The Scheme

Beginning in or about April 2021, and continuing up to and including on or about April 19, 2021, the defendant, ANTONIO DEWAYNE MENIFEE, knowingly and willfully devised and intended to devise a scheme and artifice to defraud, and to obtain money and property, by means of materially false and fraudulent pretenses, representations, and promises.

C. Purpose and Object of the Scheme

It was the purpose and object of the scheme for MENIFEE to unjustly enrich himself and others by obtaining PPP loan proceeds under false and misleading pretenses, including by making false statements about the existence of his fictitious construction business, the business's gross revenues and expenses; and the intended use of the loan proceeds.

D. Manner and Means

1. It was part of the scheme that defendant, MENIFEE, submitted electronic loan applications, or caused to be submitted electronic loan applications, for a business that purportedly did construction work. MENIFEE claimed that he owned a construction business, fraudulently claimed that the construction business had any gross revenues, fraudulently claimed that the construction business had expenses for vehicles, machinery, equipment, supplies, and travel, all for the purpose of obtaining loans that were intended for distressed small businesses as a result of the COVID-19 pandemic.

2. It was further part of the scheme that MENIFEE created fraudulent Internal Revenue Service (“IRS”) documents, including Form 1040, Schedule C, Profit or Loss from Business, for his fictitious construction business that fraudulently claimed that the construction business had any gross revenues or expenses. MENIFEE knew that these IRS documents (i) contained fraudulent information; (ii) were not filed with the IRS; and (iii) were created by MENIFEE for the purpose of obtaining fraudulent loan proceeds.

3. It was further part of the scheme that MENIFEE concealed and attempted to conceal the scheme by having the loan proceeds deposited into his checking account.

E. Execution of the Scheme

On or about April 16, 2021 and on or about April 19, 2021, in the Eastern District of Tennessee, the defendant, ANTONIO DEWAYNE MENIFEE, for the purpose of executing the scheme and artifice described above, transmitted or caused to be transmitted by means of wire communication in interstate commerce a writing, sign, or signal—that is, the electronic submission of a PPP loan application—by a third party from the third party’s electronic device

located in or near the Atlanta, Georgia area on behalf of MENIFEE'S fictitious construction business, and sent to the lender's (Benworth Capital) servers which are not located within the states of Tennessee or Georgia.

All in violation of 18 U.S.C. § 1343.

Forfeiture Allegations

The allegations contained in this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 21, United States Code, Section 853, Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

Pursuant to Title 21, United States Code, Section 853, upon conviction of an offense in violation of Title 21, United States Code 841, as set forth in Count One of this Indictment, the defendant shall forfeit to the United States of America any property constituting, or derived from, any proceeds obtained, directly or indirectly, as the result of such offense and any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of the offense including, but not limited to, the following:

U.S. Currency

Approximately \$15,000 United States currency.

Pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), upon conviction of an offense in violation of Title 18, United States Code, Section 1343, as set forth in Count Two of this Indictment, the defendant shall forfeit to the United States of America, any property, real or personal, which constitutes or is derived from proceeds traceable to the offense. The properties to be forfeited include, but are not limited to, the following:

MONEY JUDGMENT

A personal money judgment in the amount of \$11,458 in U.S. currency, which represents the minimum amount of proceeds the defendant, personally obtained as a result of an offense in violation of 18 U.S.C. § 1343.

U.S. Currency

Approximately \$15,000 United States currency.

If any of the property subject to forfeiture, as a result of any act or omission of a defendant,

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred, 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 18, United States Code, Section 982(b)(1) and by Title 28, United States Code, Section 2461.

A TRUE BILL.



~~FOREPERSON OF THE GRAND JURY~~

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