

APR 04 2017

U.S. DISTRICT COURT  
W. DIST. OF N.C.

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

	)	DOCKET NO. 1:17-CR- 40
UNITED STATES OF AMERICA	)	
	)	
v.	)	<u>BILL OF INDICTMENT</u>
	)	
1) JOSEPH SAMUEL DAVIS	)	Violations:
2) LEROY MILLER, JR.	)	18 U.S.C. § 371
	)	18 U.S.C. § 666(a)(1)(B)
	)	18 U.S.C. § 1951
	)	18 U.S.C. § 1512(b)(3)
	)	

**THE GRAND JURY CHARGES:**

**Introduction**

1. At all times material to this indictment, the Town of Tryon (hereinafter referred to as "Tryon" or "the town") was an incorporated municipality in Polk County, in the Western District of North Carolina. It was governed by a town council consisting of four elected council members and an elected mayor.

2. At all times material to this indictment, Tryon was administered by a town manager, who was appointed by, and served at the pleasure of, the town council. The town manager was responsible, among other things, for supervising all of the town's public employees and for managing the town's finances and budget.

3. At all times material to this indictment, the town manager had authority to use Tryon's credit cards to pay for legitimate town expenditures, as budgeted by the town. The town manager was not permitted to use the credit cards to pay anyone's personal bills, including the bills of any town council member.

4. At all times material to this indictment, the defendant LEROY MILLER, JR. (MILLER), was an elected member of the Tryon town council.

5. At all times material to this indictment, the defendant JOSEPH SAMUEL DAVIS (DAVIS) was the chief of the Tryon Fire Department.

6. In addition, the town council appointed DAVIS as the interim town manager in or about January of 2012, a position in which he served for several months. The town council appointed DAVIS as interim town manager again in or about February of 2013, and he served as the interim town manager until in or about May of 2013, when the town council appointed him as the permanent town manager. He continued to serve as town manager until in or about August of 2016.

7. During both of the time periods that he served as interim town manager, as well as when he served as the permanent town manager, DAVIS continued to serve as the fire chief, and to be paid for that service. During the periods of time he also served as interim town manager and as the permanent town manager, DAVIS received an increase in his salary of more than \$5,000 per year.

8. In his position as a town council member, MILLER had the power to affect and influence the appointments of DAVIS as the interim town manager and as the permanent town manager. MILLER also had the power to affect and influence DAVIS's retention of those positions, as well as his position as fire chief. MILLER also had the power to affect and influence DAVIS's salary in both of those positions.

9. Beginning at a date unknown to the Grand Jury, but at least by April of 2012, MILLER began soliciting money from DAVIS. DAVIS and MILLER reached an agreement whereby DAVIS would pay some of MILLER's personal bills in exchange for MILLER's championing within the town council for DAVIS to receive a higher salary, among other things. MILLER sometimes made his solicitations for money in person or by telephone, and sometimes by text and email messages transmitted in interstate commerce over the Internet.

10. From time to time, when he made these solicitations of money, MILLER would remind DAVIS that he, MILLER, could help the fire department with a budget increase, or could help DAVIS be appointed to the town manager position or to retain that position, or would otherwise remind DAVIS of his power to affect DAVIS, his department, and his salary.

11. Until in or about April of 2016, DAVIS gave money to MILLER out of DAVIS's personal funds.

12. Beginning in or about April of 2016, however, DAVIS had insufficient personal funds to pay MILLER when MILLER solicited money from him. DAVIS

therefore wrongfully used the town's credit cards to make payments for MILLER's personal expenses.

13. On or about April 1, 2016, DAVIS used a town credit card to pay MILLER's Duke Energy bill of \$275.50. This payment was made using interstate wire communications over the Internet.

14. On or about April 27, 2016, in response to a solicitation by MILLER to have some of his personal bills paid, DAVIS sent MILLER a text message stating: "Give me to tomorrow so I can move some money around." DAVIS also asked MILLER to inform him of his account numbers "in case I have to do it via a card."

15. On or about April 28, 2016, DAVIS used a town credit card to pay MILLER's Nationwide Insurance bill of \$194.20. This payment was made by means of an interstate wire communication through Nationwide Insurance's automated call-in service from a landline telephone number belonging to DAVIS. Nationwide Insurance sent an interstate wire communication by text message confirming this payment, sending that text message to a mobile telephone number belonging to MILLER.

16. On or about April 29, 2016, DAVIS used a town credit card to pay MILLER's Duke Energy bill of \$228.50. This payment was made using interstate wire communications over the Internet.

17. On or about June 4, 2016, DAVIS used a town credit card to pay MILLER's Duke Energy bill of \$200.35. This payment was made using interstate wire communications over the Internet.

18. Also on or about June 4, 2016, DAVIS used a town credit card to pay MILLER's Nationwide Insurance bill of \$269.32. This payment was made by means of an interstate wire communication through Nationwide Insurance's automated call-in service from a landline telephone number belonging to the Tryon Fire Department. Nationwide Insurance sent an interstate wire communication by text message confirming this payment, sending that text message to a mobile telephone number belonging to MILLER.

19. Also on or about June 4, 2016, DAVIS used a town credit card to pay MILLER's Charter Communications bill of \$219.52. This payment was made using interstate wire communications over the Internet.

20. On or about July 7, 2016, MILLER sent a text message to DAVIS soliciting money in which he stated: "I need one last time seriously." He also stated that his cable had just been shut off.

21. On or about July 9, 2016, DAVIS used the Tryon Fire Department's credit card to pay MILLER's Charter Communications bill of \$204.76. This payment was made by telephone.

22. On or about August 8, 2016, MILLER sent a text message to DAVIS in which he stated that he had managed to get two other council members (whom he identified by name) to agree to giving DAVIS some additional money for his "accrued time and recognition of doing three jobs."

23. Also on or about August 8, 2016, approximately 20 minutes after the message discussed in the preceding paragraph, MILLER sent DAVIS a text message asking for a "BIG FAVOR [*sic*]. . . .Cut off today on both." He offered to give DAVIS "5K for all you have done to help me . . . I need this one BIG TIME [*sic*]."

24. On or about August 9, 2016, DAVIS used a town credit card to pay MILLER's Charter Communications bill of \$253.00. This payment was made using interstate wire communications over the Internet.

25. Also on or about August 9, 2016, DAVIS allowed MILLER to use a town credit card number to pay MILLER's Duke Energy bill of \$201.29. This payment was made through Duke Energy's automated call-in service from a mobile telephone number belonging to MILLER.

26. On or about September 1, 2016, with a new town manager about to assume that post and DAVIS about to suffer a loss in salary as he returned to being solely the fire chief, DAVIS sent a text message to MILLER requesting that MILLER advocate on the town council for a vacation time payout for him, or some other means of paying him "before we lower my salary if we do a 3 month (or whatever) transition period."

27. On or about October 20, 2016, DAVIS sent a text message to MILLER complaining that he had not yet been told by the newly-appointed town manager about what his salary was going to be.

28. On or about October 21, 2016, DAVIS sent MILLER a text message discussing the strategy and language that MILLER should use in attempting to protect DAVIS's salary. MILLER responded a few minutes later, asking DAVIS to "send me what you want it to say and I will copy and paste it into the reply to [the new town manager's] email.

29. On or about October 21, 2016, MILLER sent a text message to the new town manager stating that they needed to meet to discuss a budget amendment about salaries, and “specifically to Joey Davis [*sic*] salary.”

30. On or about November 8, 2016, MILLER sent a text message to DAVIS asking if he could “possibly pay one more Duke Power bill due by today.” That same day, DAVIS responded by text message that he would check with his girlfriend, who “handles the purse strings.” He told MILLER that “I can’t run anything through the town anymore with [the new town manager] checking behind me on all my expenditures.”

31. In addition to obtaining payments of his personal bills using the town’s credit cards, MILLER also solicited DAVIS to participate in a bill-padding and kickback scheme. On or about March 23, 2016, a private contractor (“the contractor”) submitted a bid for construction work on municipal buildings of the town. DAVIS, as town manager, was responsible for choosing a contractor, and he approved the contract. As a town council member, MILLER was aware of the contract.

32. On or about May 3, 2016, MILLER sent a text message to DAVIS thanking DAVIS for helping him through his struggles, and then stating that he was making a “very last request as it is a DIRE ONE.” MILLER stated that he needed this help more than anything he had ever asked, and stated that he needed \$2500 by Friday. He suggested that DAVIS inflate the contractor’s bill and give the extra money to MILLER: “I figured [the contractor] could charge more and you get reimbursed from that . . . . Please please.” DAVIS, however, did not inflate the contract, and MILLER therefore received no money from this proposed scheme.

33. On or about January 18, 2017, DAVIS met with MILLER in person in Tryon and told him that he, DAVIS, had been contacted by the North Carolina State Bureau of Investigation (SBI) with regard to Tryon town funds being used to pay for MILLER’s personal bills. MILLER told him not to say anything, but that the money was from the town’s “needy fund” and that DAVIS anticipated it would be repaid. MILLER also advised DAVIS to get rid of his emails and text messages and to make sure that he did not “have a trail.”

34. On or about January 25, 2017, DAVIS again met with MILLER in Tryon. DAVIS told MILLER that the Federal Bureau of Investigation (FBI) as well as the SBI had now contacted him and wanted to speak with him. MILLER told DAVIS several times during this meeting to inform the FBI and SBI that DAVIS made the payments out of the “needy fund” and that he thought the money

would be reimbursed. When DAVIS said that he had things on his (DAVIS's) phone, MILLER told him that he should have taken that off. MILLER told DAVIS that he needed "to wipe that s--- clean." MILLER said that his (MILLER's) phone had "burnt up" and that DAVIS needed to get rid of everything and "should never hold on to that s---."

### **COUNT ONE (Conspiracy)**

35. Paragraphs 1 through 34 are realleged and incorporated herein.

36. Beginning by April 2012, the exact date being unknown to the Grand Jury, and continuing through at least November 8, 2016, in Polk County, within the Western District of North Carolina, and elsewhere, the defendants,

**1) JOSEPH SAMUEL DAVIS**

and

**2) LEROY MILLER, JR.,**

knowingly and willfully conspired and agreed together to commit an offense against the United States, that is, Federal Program Fraud, in violation of Title 18, United States Code, Section 666.

37. It was a part of the conspiracy that the defendants, being agents of the Town of Tryon, a local government receiving over \$10,000 in federal assistance in each of the years of this conspiracy, did embezzle, obtain by fraud, and otherwise knowingly convert to the use of any person other than the rightful owner, and intentionally misapplied, property owned by the Town of Tryon.

38. It was further part of the conspiracy that the defendant **LEROY MILLER, JR.**, would obtain cash payments from the defendant **JOSEPH SAMUEL DAVIS** in exchange for **MILLER's** abuse of his position as a Town of Tryon council member in assisting **DAVIS** in obtaining and retaining the position of interim town manager and of permanent town manager, with an increase in salary of more than \$5000 per year paid by the Town of Tryon.

39. It was further part of the conspiracy that the defendant **JOSEPH SAMUEL DAVIS** wrongfully used the Town of Tryon's credit cards to pay for personal bills of the defendant **LEROY MILLER, JR.**

40. In furtherance of the conspiracy, and to effect the objects thereof, the defendants did commit the overt acts alleged in Paragraphs 9 through 32 of this Bill of Indictment, among others.

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

**COUNT TWO (Federal Program Fraud)**

41. Paragraphs 1 through 34 are realleged and incorporated herein.

42. At all times material to this indictment, the Town of Tryon was a local government that received federal assistance in excess of \$10,000 during calendar years 2012 through 2016, and the defendant, **LEROY MILLER, JR.**, was an agent of the Town of Tryon.

43. Beginning by April 2012, the exact date being unknown to the Grand Jury, and continuing through at least November 8, 2016, in Polk County, within the Western District of North Carolina, and elsewhere, the defendant,

**2) LEROY MILLER, JR.,**

did corruptly solicit and demand for the benefit of any person, that is, himself, a thing of value from Joseph Samuel Davis, intending to be influenced and rewarded in connection with a transaction and series of transactions of the Town of Tryon involving \$5,000 or more.

All in violation of Title 18, United States Code, Section 666(a)(1)(B).

**COUNT THREE (Extortion Under Color of Official Right)**

44. Paragraphs 1 through 34 are realleged and incorporated herein.

45. Beginning by April 2012, the exact date being unknown to the Grand Jury, and continuing through at least November 8, 2016, in Polk County, within the Western District of North Carolina, and elsewhere, the defendant,

**2) LEROY MILLER, JR.,**

did knowingly affect and attempt to affect in any way and degree commerce and the movement of articles and commodities in commerce by extortion, as those terms are defined in Title 18, United States Code, section 1951; that is, the

defendant **LEROY MILLER, JR.**, obtained property not due him or his office, from Joseph Samuel Davis, with the consent of Joseph Samuel Davis, under color of official right.

All in violation of Title 18, United States Code, Section 1951.

**COUNT FOUR (Witness Tampering)**

46. Paragraphs 1 through 34 are realleged and incorporated herein.

47. On or about January 25, 2017, in Polk County, in the Western District of North Carolina, the defendant,

**2) LEROY MILLER, JR.,**

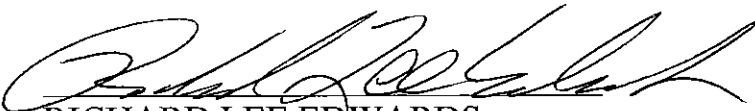
did knowingly attempt to corruptly persuade Joseph Samuel Davis to destroy electronic data and to make false statements to criminal investigators with the intent to hinder, delay, and prevent the communication to a federal law enforcement officer of information relating to the commission of a Federal offense, that is, the crimes charged in Counts One through Three of this Bill of Indictment.

All in violation of Title 18, United States Code, Section 1512(b)(3).

A TRUE BILL:

\_\_\_\_\_  
FOREPERSON

JILL WESTMORELAND ROSE  
UNITED STATES ATTORNEY

  
RICHARD LEE EDWARDS  
ASSISTANT UNITED STATES ATTORNEY



# NEW CRIMINAL CASE COVER SHEET

# U. S. DISTRICT COURT

(To be used for all new Bills of Indictments and Bills of Information)

CASE SEALED:  YES  NO

DOCKET NUMBER: 1:17cr40

If case is to be sealed, a Motion to Seal and proposed Order **must** be attached.)

CASE NAME : **US vs** Joseph Samuel Davis, et al

COUNTY OF OFFENSE : Polk

RELATED CASE INFORMATION : None

Magistrate Judge Case Number :

Search Warrant Case Number :

Miscellaneous Case Number :

Rule 20b :

SERVICE OF PROCESS : Warrant

U.S.C. CITATIONS (Mark offense carrying greatest weight):  Petty  Misdemeanor  Felony

18 U.S.C. § 371, 666(a)(1)(B), 1951, 1512(b)(3)

JUVENILE:  Yes  No

ASSISTANT U. S. ATTORNEY : Edwards, Richard

VICTIM/WITNESS COORDINATORS:

INTERPRETER NEEDED :

LIST LANGUAGE AND/OR DIALECT:

REMARKS AND SPECIAL INSTRUCTIONS: