

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

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

UNITED STATES OF AMERICA

v.

JOSEPH SAMUEL DAVIS

) DOCKET NO.: 1:17-cr-40-01

)

) **FACTUAL BASIS**

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NOW COMES the United States of America, by and through R. Andrew Murray, United States Attorney for the Western District of North Carolina, and hereby files this Factual Basis in support of the plea agreement filed simultaneously in this matter.

This Factual Basis is filed pursuant to Local Criminal Rule 11.2 and does not attempt to set forth all of the facts known to the United States at this time. By their signatures below, the parties expressly agree that there is a factual basis for the guilty plea(s) that the defendant will tender pursuant to the plea agreement, and that the facts set forth in this Factual Basis are sufficient to establish all of the elements of the crime(s). The parties agree not to object to or otherwise contradict the facts set forth in this Factual Basis.

Upon acceptance of the plea, the United States will submit to the Probation Office a "Statement of Relevant Conduct" pursuant to Local Criminal Rule 32.4. The defendant may submit (but is not required to submit) a response to the Government's "Statement of Relevant Conduct" within seven days of its submission. The parties understand and agree that this Factual Basis does not necessarily represent all conduct relevant to sentencing. The parties agree that they have the right to object to facts set forth in the presentence report that are not contained in this Factual Basis. Either party may present to the Court additional relevant facts that do not contradict facts set forth in this Factual Basis.

1. 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, governed by a town council consisting of four elected council members and an elected mayor. It 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. 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.

2. Leroy Miller, Jr. (Miller), was an elected member of the Tryon town council during the time relevant to this case, and the defendant JOSEPH SAMUEL DAVIS (DAVIS) was the chief of the Tryon Fire Department. 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. He also continued to serve as the chief of the Tryon Fire Department this entire time.

3. 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. Additionally, he had the power to influence a possible termination of DAVIS's employment by the town if he so chose, and DAVIS was aware of this fact and was concerned about angering Miller.

4. Taking advantage of this situation, 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. 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. 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 employment position, his department, and his salary.

5. Until in or about April of 2016, DAVIS gave money to Miller out of DAVIS's personal funds, but beginning in or about April of 2016, however, DAVIS had insufficient personal funds to pay Miller when Miller solicited money from him. As a last resort, rather than informing law enforcement authorities about Miller's criminal behavior, DAVIS therefore wrongfully used the town's credit cards to make payments for Miller's personal expenses.

6. These improper uses of the town's credit card, using interstate wire communications, included:

- a. April 1, 2016: Miller's Duke Energy bill of \$275.50;
- b. April 28, 2016: Miller's Nationwide Insurance bill of \$194.20;
- c. April 29, 2016: Miller's Duke Energy bill of \$228.50;
- d. June 4, 2016: Miller's Duke Energy bill of \$200.35;
- e. June 4, 2016: Miller's Nationwide Insurance bill of \$269.32;
- f. July 9, 2016: Miller's Charter Communications bill of \$204.76;
- g. August 9, 2016: Miller's Charter Communications bill of \$253.00;
- h. August 9, 2016: Miller's Duke Energy bill of \$201.29.

7. As an affirmative action to conceal the above-described series of interstate wire communications that were committed in furtherance of a scheme and artifice to defraud the Town of Tryon, the defendant falsely noted on several of the receipts for the above-described transactions that the payments were being made as part of a federal program that provided assistance to local fire and emergency departments, known as "SAFER."

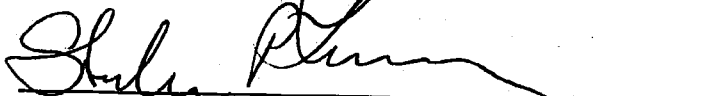
R. ANDREW MURRAY  
UNITED STATES ATTORNEY



Richard Lee Edwards  
ASSISTANT UNITED STATES ATTORNEY

Defendant's Counsel's Signature and Acknowledgment

I have read this Factual Basis, the Superseding Bill of Information, and the plea agreement in this case, and have discussed them with the defendant. Based on those discussions, I am satisfied that the defendant understands the Factual Basis, the Superseding Bill of Information, and the plea agreement. I hereby certify that the defendant does not dispute this Factual Basis.

  
Stephen P. Lindsay, Attorney for Defendant

DATED: 10/26/18