

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA

v.

DAVID BUTZIGER,

Defendant.

Criminal Case No. 1:20CR72MSM-LDA
In violation of 18 U.S.C. § 1349

INFORMATION

The United States Attorney charges that:

COUNT 1

(Conspiracy to Commit Bank Fraud)

Introduction

1. At all times relevant to this Information, defendant DAVID BUTZIGER (“BUTZIGER”) resided within the State of Rhode Island.

2. At all times relevant to this Information, co-conspirator David Staveley, a/k/a “Kurt Sanborn,” a/k/a “David Sanborn” (“Staveley”) resided within the States of Massachusetts and Rhode Island.

Entities Associated with Butziger and Staveley

3. Oakland Beach Restaurant Group LLC, d/b/a “Top of the Bay,” is a Rhode Island corporation that was established on or about March 11, 2020. Defendant BUTZIGER is the registered agent for the corporation. The principal office for the corporation is listed as 898 Oakland Beach Avenue, Warwick, RI, the address of “Top of the Bay” restaurant.

4. Apponaug Restaurant Group, LLC was incorporated in the State of Rhode Island on or about November 25, 2019. Its listed principal office address is 3376 Post Road, Warwick, RI, the address of a restaurant named Remington House that has been closed since approximately November 2018. The property at this address was purchased by the Apponaug Restaurant Group, LLC on January 21, 2020. The listed managers of the Apponaug Restaurant Group LLC are S.S. and G.S.

5. On The Trax is the name of a former restaurant located in Berlin, MA. It is owned by New Flat Penny, LLC, a Massachusetts company opened under the name of G.S.

6. Dock Wireless is an unincorporated entity owned by BUTZIGER.

The CARES ACT and the Paycheck Protection Program

7. The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act is a federal law enacted on March 29, 2020 designed to provide emergency financial assistance to the millions of Americans who are suffering the economic effects caused 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, over \$300 billion in additional PPP funding was authorized by Congress.

8. The PPP allows qualifying small-businesses and other organizations to receive loans with a maturity of 2 years and interest rate of 1%. PPP loan proceeds must be used by businesses on payroll costs, interest on mortgages, rent, and utilities. The PPP allows the interest and principal to be forgiven if businesses spend the proceeds on these expenses within 24 weeks of receipt and use at least 60% of the forgiven amount for payroll. The amount of PPP funds a business may receive is determined by the number of employees employed by the business and their average payroll costs for a period of 2.5 months. Businesses applying for a PPP loan must provide documentation, such as IRS Forms 940 and 941, to confirm that they have in the past paid employees the compensation listed on the application.

9. The PPP is overseen by the Small Business Administration (“SBA”). Individual PPP loans are issued by private approved lenders (most commonly, banks and credit unions) who receive and process PPP applications and supporting documentation, and then make loans using the lenders’ own funds.

10. At all times relevant to this Information, BankNewport was a financial institution doing business in the District of Rhode Island. The deposits of BankNewport are federally insured by the Federal Deposit Insurance Corporation.

The Conspiracy

11. Beginning on or about April 6, 2020 and continuing through on or about April 27, 2020, in the District of Rhode Island and elsewhere, defendant

DAVID BUTZIGER,

together with David Staveley, a/k/a “Kurt Sanborn,” a/k/a “David Sanborn,” knowingly and unlawfully combined, conspired and agreed together and with each other to commit bank fraud, by knowingly executing and attempting to execute a scheme and artifice to defraud BankNewport and to obtain moneys, funds, assets, and other property owned by, and under the custody and control of BankNewport by means of false and fraudulent pretenses, representations, and promises, contrary to 18 U.S.C. § 1344.

Object of the Conspiracy

12. It was the object of the conspiracy to fraudulently obtain forgivable PPP loans issued by BankNewport by falsely representing to BankNewport that corporations and entities under the control of the co-conspirators employed numerous individuals and had significant monthly payrolls.

Manner and Means of the Conspiracy

13. It was part of the conspiracy that co-conspirator Staveley established corporations and opened bank accounts in the name of his brother G.S. without the knowledge or consent of G.S.

14. It was a further part of the conspiracy that co-conspirator Staveley applied to BankNewport for forgivable PPP loans using the name, date of birth and social security number of his brother G.S., without the knowledge or consent of G.S.

15. It was part of the conspiracy that on or about April 6, 2020, co-conspirator Staveley submitted a loan application under the PPP to BankNewport on behalf of Oakland Beach Restaurant Group LLC, d/b/a "Top of the Bay." The loan application was in the amount of \$185,750 and fraudulently represented that Oakland Beach Restaurant Group, LLC had 26 employees and an average monthly payroll of \$53,000. In truth and in fact, Oakland Beach Restaurant Group LLC did not own or operate Top of the Bay restaurant and had no employees.

16. It was a further part of the conspiracy that on or about April 6, 2020, co-conspirator Staveley submitted a loan application under the PPP to BankNewport on behalf of Apponaug Restaurant Group LLC, d/b/a "Remington House." The loan application was in the amount of \$144,050 and fraudulently represented that Apponaug Restaurant Group, LLC had 18 employees and an average monthly payroll of \$46,000. In truth and in fact, the Remington House restaurant had been closed since November 2018 and Apponaug Restaurant Group, LLC had no employees.

17. It was a further part of the conspiracy that on or about April 6, 2020, co-conspirator Staveley submitted a loan application under the PPP to BankNewport on behalf of New Flat Penny LLC, d/b/a "On The Trax." The loan application was in the

amount of \$108,777.50 and fraudulently represented that New Flat Penny, LLC had 22 employees and an average monthly payroll of \$36,000. In truth and in fact, On The Trax restaurant had been closed since approximately March 10, 2020 after its liquor license was revoked. New Flat Penny, LLC had no employees when the PPP application was submitted.

18. It was a further part of the conspiracy that on or about April 6, 2020, defendant DAVID BUTZIGER submitted a loan application under the PPP to BankNewport on behalf of an unincorporated entity called Dock Wireless. The loan application was in the amount of \$105,381.50 and fraudulently represented that Dock Wireless had 7 employees and an average monthly payroll of \$42,152.60. In truth and in fact, Dock Wireless has no employees and no wages were ever paid by Dock Wireless.

19. It was a further part of the conspiracy that on or about April 10, 2020, co-conspirator Staveley submitted to BankNewport an IRS 941 Form in support of the PPP application of Apponaug Restaurant Group LLC, d/b/a "Remington House." The 941 Form provided by STAVELEY fraudulently listed wages for Apponaug Restaurant Group LLC to be \$138,000 for the first quarter of 2020 when, in truth and in fact, no wages were paid in this period. Defendant BUTZIGER created this false and fraudulent 941 Form.

20. It was a further part of the conspiracy that on or about April 13, 2020, defendant DAVID BUTZIGER submitted to BankNewport an IRS Form 941 in support

of the PPP application for Dock Wireless. The 941 Form provided by BUTZIGER fraudulently provided that Dock Wireless had paid 6 employees a total \$126,500 during the first quarter of 2020 when, in truth and in fact, no wages were ever paid.

21. It was a further part of the conspiracy that on or about April 14, 2020, co-conspirator Staveley submitted to BankNewport an IRS 941 Form in support of the PPP application of Oakland Beach Restaurant Group LLC, d/b/a "Top of the Bay." The 941 Form provided by Staveley fraudulently listed wages for Oakland Beach Restaurant Group, LLC, to be \$158,723.52 for the first quarter of 2020 when, in truth and in fact, no wages were paid in this period. Defendant BUTZIGER created this false and fraudulent 941 Form.

All in violation of 18 U.S.C. § 1349.

FORFEITURE ALLEGATION

Pursuant to Federal Rule of Criminal Procedure 32.2, notice is hereby given to defendant DAVID BUTZIGER, that in the event the defendant is convicted of this Information, the defendant shall forfeit to the United States, pursuant to Title 18, United States Code, Section 2253(a), all property, real or personal, used or intended to be used to commit or facilitate the commission of the offenses of conviction.

AARON L. WEISMAN
UNITED STATES ATTORNEY



LEE H. VILKER
Assistant U.S. Attorney



SANDRA R. HEBERT
Assistant U.S. Attorney
Deputy Criminal Chief

Date: August 26, 2020

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: INFORMATION INDICTMENT COMPLAINT

CASE NO. 1:20CR72MSM-LDA

Matter Sealed: Juvenile Other than Juvenile
 Pre-Indictment Plea Superseding Defendant Added
 Indictment Charges/Counts Added
 Information

USA vs.

Defendant: DAVID ANDREW BUTZIGER

Name of District Court, and/or Judge/Magistrate Location (City)

Address: [REDACTED]

UNITED STATES DISTRICT COURT RHODE ISLAND
 DISTRICT OF RHODE ISLAND Divisional Office

Name and Office of Person AARON WEISMAN
 Furnishing Information on U.S. Atty Other U.S. Agency
 THIS FORM Phone No. (401) 709-5044

Interpreter Required Dialect: _____

Name of Asst. U.S. Attorney LEE H. VILKER
 (if assigned)

Birth Date [REDACTED] Male Alien
 Female (if applicable)

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)
Federal Bureau of Investigation

Social Security Number [REDACTED]

person is awaiting trial in another Federal or State Court
 (give name of court)

this person/proceeding transferred from another district
 per (circle one) FRCrP 20, 21 or 40. Show District

this is a re prosecution of charges previously dismissed which were
 dismissed on motion of:
 U.S. Atty Defense

SHOW
 DOCKET NO.

this prosecution relates to a pending case involving this same
 defendant. (Notice of Related Case must still be filed with the
 Clerk.)

prior proceedings or appearance(s) before U.S. Magistrate Judge
 regarding this defendant were recorded under
20-MJ-00033-LDA

MAG. JUDGE
 CASE NO.
20-MJ-00033-LDA

Place of offense RHODE ISLAND County

DEFENDANT

Issue: Warrant Summons

Location Status:

Arrest Date _____ or Date Transferred to Federal Custody _____

Currently in Federal Custody

Currently in State Custody

Writ Required

Currently on bond

Fugitive

Defense Counsel (if any): John L. Calcagni, III., Esq.

FPD CJA RET'D

Appointed on Target Letter

This report amends AO 257 previously submitted

OFFENSE CHARGED - U.S.C. CITATION - STATUTORY MAXIMUM PENALTIES - ADDITIONAL INFORMATION OR COMMENTS

Total # of Counts 1

Set	Title & Section/Offense Level (Petty = 1 / Misdemeanor = 3 / Felony = 4)	Description of Offense Charged	Felony/Misd.
	18 U.S.C. § 1349	Conspiracy to commit bank fraud	<input checked="" type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor
Max	Penalty: 30yrs imprisonment; 5yrs S/R;	\$250,000 fine; \$100 special assessment	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor
			<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor
			<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor
		Estimated Trial Days: 3 days	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor

AO 455 (Rev. 01/09) Waiver of an Indictment

UNITED STATES DISTRICT COURT
for the
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David Butziger

Defendant

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Case No. 1:20CR72MSM-LDA

WAIVER OF AN INDICTMENT

I understand that I have been accused of one or more offenses punishable by imprisonment for more than one year. I was advised in open court of my rights and the nature of the proposed charges against me.

After receiving this advice, I waive my right to prosecution by indictment and consent to prosecution by information.

Date: _____

Defendant's signature

Signature of defendant's attorney

John L. Calcagni, III., Esq.
Printed name of defendant's attorney

Judge's signature

Judge's printed name and title