

MO9-0024

RTF:SC:MER
F.#2005R01856

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TO BE FILED UNDER SEAL

UNITED STATES OF AMERICA

AFFIDAVIT IN SUPPORT OF
ARREST WARRANT

-against-

(18 U.S.C. § 666(a)(1)(B))

KEVIN COOK,

Defendant.

- - - - -X

EASTERN DISTRICT OF NEW YORK, SS:

EVAN CAMPANELLA, being duly sworn, deposes and says that he is a Special Agent with the United States Immigration and Customs Enforcement ("ICE"), duly appointed according to law and acting as such.

Upon information and belief, there is probable cause to believe that from in or about and between July 2007 and January 2009, within the Eastern District of New York and elsewhere, the defendant KEVIN COOK, being an agent of an organization that received in excess of \$10,000 in any one year period under a Federal program involving a grant, subsidy or other form of Federal assistance, did knowingly, intentionally and corruptly solicit, demand, accept and agree to accept something of value, to wit, United States currency, with the intent to be influenced and rewarded in connection with business and a series of transactions of such organization involving \$5,000 or more.

(Title 18, United States Code, Section 666(a)(1)(B))

The source of your deponent's information and the grounds for his belief are as follows:¹

1. I have been a Special Agent with ICE since May 2007. I am currently assigned to ICE's El Dorado Task Force, which investigates money laundering.

2. The facts set forth in this affidavit are based upon my own investigation of the facts, a review of documents, witness interviews, and upon what I have learned from other agencies, including the Internal Revenue Service ("IRS") and the Office of the Inspector General of The Port Authority of New York and New Jersey.

I. The Defendant, Con Ed and the Contractor

3. Consolidated Edison ("Con Ed") is a New York-based corporation that provides electrical, gas and steam utility services in New York City and Westchester County. As a provider of such utility services, Con Ed is responsible for the maintenance and repair of its electrical, gas and steam lines, as well as the installation of new lines as needed. Con Ed is further responsible for rebuilding and rerouting existing utility lines as part of construction projects that interfere with

¹ Because the purpose of this affidavit is only to state the probable cause to arrest, I have not described all the relevant facts, circumstances and conversations that I am aware of related to this investigation. All conversations and statements reported in this affidavit, unless directly quoted, are described in substance and in part.

existing lines. Con Ed received federal funding in excess of \$10,000 for each year from 2007 through 2009.

4. The defendant KEVIN COOK is employed as a Senior Specialist for Con Ed, and his duties include overseeing construction projects in Westchester County and supervising Chief Construction Inspectors ("CCIs") and those subordinate to CCIs. COOK is also responsible for reviewing invoices from various Con Ed contractors for construction work performed by those contractors, approving those invoices and passing the invoices up Con Ed's chain of command for payment.

5. Cooperating Witness #1 ("CW-1") is the president and co-owner of a construction company that performs gas line and electrical work on construction projects.² Since 2004, CW-1 has been awarded numerous construction contracts by Con Ed.

II. The Con Ed Contract

6. In March 2007, CW-1 was awarded a two-year "area contract" with Con Ed to install and maintain various electric and "dead gas" (empty pipes with no live gas) facilities throughout Southern Westchester County, with an option for a third year. CW-1 intends to re-bid the contract when the two-year term is up.

² On September 17, 2008, CW-1 was arrested and has since signed a cooperation agreement with the government and is expected to plead guilty in the near future.

III. The Kickback Scheme

7. In approximately July 2007, CW-1 called defendant COOK about a number of invoices that CW-1 had submitted to Con Ed, which CW-1 believed COOK had cut in half. Shortly after this call, COOK and CW-1 met at the parking lot of the Westchester Marriot Hotel in Tarrytown, New York. COOK told CW-1 that he needed to be "more proactive," and CW-1 apologized for not calling COOK sooner. Approximately one week after their initial meeting, CW-1 and COOK met at a diner in Westchester, at which time COOK handed CW-1 a piece of paper with a note in which COOK requested \$150,000 to provide assistance to CW-1. CW-1 discarded the paper after the meeting because the figure was too high. The following week, CW-1 and COOK met again, and CW-1 told COOK that he could not pay that amount of money. CW-1 and COOK then reached an agreement whereby CW-1 would pay COOK \$8,000 per month, and in exchange, COOK would ensure that CW-1's invoices would be reviewed favorably and that the payments to CW-1 would not be cut. Typically, CW-1 would meet up with COOK to make the cash payments either at CW-1's office in the Bronx, New York, or in CW-1's car.

8. Between July 2007 and September 2008, CW-1 paid COOK \$8,000 on approximately ten separate occasions. As a result of the payments to COOK, CW-1's invoices have not been reduced as much as they had been before CW-1 started paying COOK.

IV. Recorded Conversations³

9. On November 6 and 7, 2008, CW-1 and defendant COOK spoke by telephone to arrange a meeting. On November 7, 2008, CW-1 met with COOK at a parking lot in Astoria, Queens, at which time CW-1 gave COOK an envelope containing \$5,000 in cash. This transfer of cash was videotaped. CW-1 explained to COOK that, "I know it's supposed to be eight," but "cash is low." CW-1 then asked COOK to be patient. COOK responded, "I'm very patient."

10. CW-1 and defendant COOK then discussed how the kickback scheme originated after COOK had cut payments on CW-1's invoices, and CW-1's hope that COOK could get some of those payments back for CW-1 before CW-1's bid on the extension of the area contract was decided:

CW-1: The, um, the, the, the only, the only, the last thing I wanted to ask you, because if this thing is going to go up for re-bid, the, the jobs that, that, remember that chunk of jobs that were cut? I know we talked about them before.

COOK: Which ones?

CW-1: Um, there were a block of jobs. The jobs that, that, uh, after they were cut I called you.

COOK: Uh-huh.

CW-1: Remember? I was like -

COOK: Oh, right! Okay.

³ CW-1 wore an electronic device to record the conversations with the defendant that are quoted in this section of the affidavit.

CW-1: You know, I said, "Okay," you know, that's when we started talking, right? That, that, it's like 300,000 dollars. I, I, I go through the jobs and they're like the cost of like six, I mean, uh, billing of six, and cost of like 55. I mean, it, it, I, I want to look at those again -

COOK: Alright.

CW-1: Before -

COOK: Give, give me the layout numbers, 'cause I'm not gonna remember what they are.

* * *

COOK: Just give me the layout numbers, I'll drag them back out again.

CW-1: Yeah.

COOK: That's fine.

CW-1: Okay. 'Cause I, I do wanna take care of that before, um,

COOK: Yeah, we can cer-, we can certainly do that. That's not an issue.

CW-1: Yeah. I wanna square that away 'cause once, once it, it's cut, if, if I lose the bid then I lose that. I know it's never coming back.

COOK: Yeah.

CW-1: You know? So I wanna take care of that 'cause then, I mean, alright, you know, I'm sure that it's not perfect, but um, if I can get half of it back I'll be happy.

COOK: If you get anything back, hey, whatever you get it's -

CW-1: What I don't have.

COOK: Extra. [Laughs] That's right.

COOK agreed that he would look at the previous payments to see what he could get for CW-1 if CW-1 provided him with the layout numbers. COOK explained, "Get me that and I'll, I'll, I'll pull them out. That's not a problem." At the end of the conversation, CW-1 told COOK, "I'll get you a list of those jobs."

11. On November 25, 2008, CW-1 and defendant COOK met in CW-1's car in the parking lot of the Westchester Marriot Hotel in Tarrytown, New York. At the beginning of the conversation, CW-1 told COOK, "I wanted to catch you before the holidays 'cause last time I only had five, so actually I got a little extra this, I was able to come up with another five, but I need you to look at this." CW-1 then handed COOK a piece of paper listing the jobs they had discussed during their previous meeting, and stated "these are the ones that you cut." CW-1 and COOK then discussed COOK's ability to get CW-1 some of that money back:

CW-1: This is as close as I could get because I can't go back and check the, um, you know when they come in a block payment? Like in other words they were all a bunch paid in one block and they were all, you know, this one in particular [pointing to paper].

COOK: You got a problem with losing 100 grand on a job?
[Laughs]

CW-1: 100 grand? Ah, 300,000.

COOK: I know, this is only on one job.

CW-1: I know, I know, I know.

COOK: That's fucked up, alright, I'll take a look at that.

CW-1: You don't remember these?

COOK: I remember talking, I keep forgetting about it, yeah.

CW-1: Yeah, but I'm saying after you cut them these are the ones that you and I, after, this is when we sat down and talked -

COOK: Right.

CW-1: - the first time, a matter of fact, here.
[Laughs] I met you here and this was the um, the wake up call, you know, but that's fine. I'm scared that it's too old.

COOK: Nothing's too old.

CW-1: No?

COOK: Nah, you were going through your books and said "hey, maybe there's a mistake on these."

CW-1: Okay.

COOK: I'll pull them out and look at them. That's not a problem.

CW-1: Alright, so?

COOK: I'll take care of that.

CW-1: Anything you need from me -

COOK: I'll let you know.

CW-1: - to do it?

COOK: Shouldn't.

CW-1: No?

COOK: I should have all the, I'll go through the bills. Hopefully they'll have the shit that they cut on

you and why they cut it and I'll go through it line by line, no problem, no problem.

At that point, COOK indicated that he was not the person who cut CW-1's payments on the listed jobs, but instead it was someone else at Con Ed. CW-1 explained that he thought COOK was responsible for cutting the payments. CW-1 said, "I'll be honest with you because the real reason why I thought you cut them was because after I paid you the first thing, I never got another cut like it[.]" COOK replied, "I never cut, when the situation come up we talked about it and that was it." COOK concluded, "Yeah, that won't be a problem. I'll revisit the bills, just say that in the middle of going through all these bills I went through these and this was an unresolved issue." CW-1 also expressed concern that the fact that some of the bills were over a year old would make it difficult to get approvals for further payments.

COOK responded:

COOK: Yeah, I can play with it. Nobody's looking at this time of year is good, if this happens in January, it's not good.

CW-1: Well, that's why I wanted to get you -

COOK: It's like a late season batting average, you gotta do a lot of shit to move it.

CW-1: I know that the year is coming to a close -

COOK: Yeah.

CW-1: - so that's why I wanted to get it to you.

COOK: We have six weeks, five weeks, so that's plenty of time to do that. As long as it's not the next

year and we can even back date shit, that's fine too, you know.

At the end of the conversation, CW-1 and COOK again discussed the possibility of getting money back from the bills that had been cut. During that part of the conversation, CW-1 handed COOK an envelope containing \$5,000 cash. This transfer of cash was videotaped. CW-1 and COOK also discussed the bid on the area contract extension, and COOK pledged to help CW-1 by getting him the contract specifications or "numbers" in advance. The conversation concluded:

COOK: I'll comb through this shit.

CW-1: Yeah, I'll bet you dinner that you cut them.
[Laughs] I'm just gonna put it out there.

COOK: Alright. Like I said, I don't remember doing something this massive, but -

CW-1: Okay but I dunno but for some reason it sticks out in my head that way, you know?

COOK: I'll take a look and I'll tell you if that's the case. [CW-1 hands envelope to COOK] I'll laugh with you.

CW-1: And that's five and try, try to get that list please.

COOK: I will.

CW-1: Alright, that's - if the contract ends but I can recoup that, it'll like it's like taking, um, antacids, you know? It'll help -

COOK: It'll help the pain a little bit?

CW-1: Yes, exactly. You know?

COOK: Alright.

CW-1: Alright, and listen, if you hear something about the new bid or if you come up with an idea let me know.

COOK: Yeah and I'll give you all the numbers in advance.

CW-1: 'Cause any angle that I can work off of before the bid goes in is going to be helpful, alright?

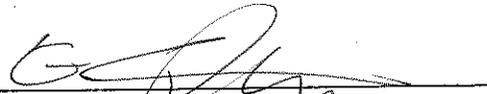
COOK: Okay. You got it. [Exits vehicle]

12. On December 22, 2008, COOK left a voicemail message for CW-1 indicating that COOK had reviewed the invoices on the list CW-1 provided during their November 25, 2008 meeting, and stated that he didn't see indications that the invoices had been cut. In a series of subsequent calls, COOK and CW-1 agreed to meet again to discuss the issue.

13. On January 6, 2009, CW-1 and defendant COOK met in CW-1's car in the parking lot of the Westchester Marriot Hotel in Tarrytown, New York. During the meeting, COOK brought copies of some of the disputed invoices and CW-1 brought "backup" paperwork for the invoices that he believed had been cut. CW-1 and COOK then discussed the best way to get CW-1 some of the money that had been cut. COOK assured CW-1 that he would go over the invoices again, and said "nobody's going to look at these but me." COOK assured CW-1 that he would help create whatever paperwork was required and would get the additional payments to CW-1.

WHEREFORE, your deponent respectfully requests that an arrest warrant be issued for the defendant KEVIN COOK so that he may be dealt with according to law.

Because of the nature of this application, it is further requested that this application and the related arrest warrant be filed under seal.


EVAN CAMPANELLA
Special Agent, ICE

Sworn to before me on
12 day of January 2009.


UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK