

**FILED**

UNITED STATES DISTRICT COURT  
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

FEB 08 2012

MATTHEW J. DYKMAN

CLERK

CRIMINAL NO. 12-264

UNITED STATES OF AMERICA,

Plaintiff,

vs.

**MAX R. TAFOYA and  
TYLER COLE**

Defendants.

Count 1: 18 U.S.C. § 371: Conspiracy;

Counts 2-5: 18 U.S.C. §§ 1031 and 2(a):  
Major Fraud Against the United States;

Counts 6-9: 18 U.S.C. § 1001(a): False  
Statements.

INDICTMENT

The Grand Jury charges:

Introduction

1. The United States Department of Veterans Affairs (VA) is an agency within the executive branch of the United States government responsible for providing federal services and benefits to veterans: that is, persons who have served in the nation's Armed Forces.

2. A "service-disabled veteran" is a veteran with a disability that was incurred or aggravated in the line of duty in the active military, naval, or air service.

3. In 1999, Congress passed the Veterans Entrepreneurship and Small Business Development Act of 1999. The Act announced that "the United States has done too little to assist veterans, particularly service-disabled veterans, in playing a greater role in the economy of the United States by forming and expanding small business enterprises." Accordingly, Congress established a Government-wide goal to increase the number of government contracts awarded to small businesses that are owned and controlled by service-disabled veterans.

4. Small businesses that are owned and controlled by service-disabled veterans are known as SDVOSBs.

5. The Veterans Benefits, Health Care, and Information Technology Act of 2006 gave SDVOSBs the highest priority in contracting preferences for VA contracts awarded to small businesses — that is, small businesses owned and controlled by service-disabled veterans were to be chosen for VA contracts before small businesses owned by any other class of persons, including veterans that did not have a service-connected disability.

6. By law, a small business must be both owned and controlled by one or more service-disabled veterans to qualify as an SDVOSB.

7. By law, a small business is “owned” by a service-disabled veteran when the service-disabled veteran unconditionally and directly owns at least 51% of the business. In the case of a corporation, the service-disabled veteran must unconditionally own at least 51% of all outstanding stock.

8. By law, a small business is “controlled” by a service-disabled veteran when the service-disabled veteran (1) conducts the business’s long-term decisionmaking, (2) conducts the day-to-day management and administration of the business operations, (3) holds the highest officer position in the business, and (4) has managerial experience of the extent and complexity needed to run the business.

9. M.R. Tafoya Construction, Incorporated (M.R. Tafoya Construction) is a small business in the field of construction that is incorporated and headquartered in New Mexico.

10. From 2009 to 2010, M.R. Tafoya Construction was awarded five contracts that required M.R. Tafoya Construction to hold SDVOSB status: (1) contract number VA 786 AC

0121, relating to work at the Fort Bliss National Cemetery, valued at \$3,740,935; (2) contract number VA 786 AC 0142, also relating to work at the Fort Bliss National Cemetery, valued at \$1,424,324; (3) contract number VA 786 RA 0333, relating to work at the Santa Fe National Cemetery, valued at \$98,930; (4) contract number VA 786 AC 0337, relating to work at the Fort Logan National Cemetery, valued at \$2,640,000; and (5) contract number VA 786 AC 0345, relating to work at the Jefferson Barracks National Cemetery, valued at \$3,080,000.

11. Defendant **MAX R. TAFOYA** is a resident of New Mexico. **TAFOYA** incorporated M.R. Tafoya Construction in 1991 and through the duration of the scheme alleged below was the owner of 100% of the corporation's stock and conducted the day-to-day management of the corporation. **TAFOYA** is a veteran but does not have any service-connected disability.

12. Defendant **TYLER COLE** is a resident of New Mexico. **COLE** is Defendant **MAX R. TAFOYA**'s son-in-law and at all times relevant to this Indictment served as an unofficial manager of M.R. Tafoya Construction. **COLE** is not a veteran.

13. Andrew Castillo is a resident of Florida. Castillo is Defendant **MAX R. TAFOYA**'s step-brother. Beginning on April 15, 2007, and continuing through all times relevant to this Indictment, Castillo was a full-time employee of the United States Forest Service in Tallahassee, Florida. Castillo is a service-disabled veteran, having sustained non-combat related injuries while serving in the Air Force.

Count 1

14. Paragraphs 1 through 13 of the Introduction are realleged and incorporated as if fully stated here.

15. From in or about December 2008, through in or about February 2011, in the District of New Mexico and elsewhere, Defendants **MAX R. TAFOYA, TYLER COLE**, and others known and unknown to the Grand Jury, did knowingly and voluntarily conspire and agree and act interdependently with each other to

(1) defraud the United States, and any agency thereof in any manner and for any purpose;

(2) commit major fraud against the United States in violation of 18 U.S.C. § 1031, that is, to knowingly execute and attempt to execute a scheme and artifice with the intent to defraud the United States and to obtain money and property by means of false and fraudulent pretenses, presentations, and promises in a procurement of services as a prime contractor with the United States, where the value of such contract was \$1,000,000 and more, in violation of 18 U.S.C. § 1031,

(3) commit wire fraud in violation of 18 U.S.C. § 1343, that is, to transmit and cause to be transmitted by means of wire communication in interstate commerce any writings, signs, signals, pictures, and sounds for the purpose of executing a scheme and artifice to defraud the VA of money and property, and to obtain money and property by means of false and fraudulent pretenses, in violation of Title 18, United States Code, Section 1343.

and one or more of such persons did any act to effect the object of the conspiracy.

Objective of the Conspiracy

16. The essential object of the conspiracy, known to all coconspirators, was to obtain and maintain valuable SDVOSB contracts from the VA for which M.R. Tafoya Construction was

not qualified. It was further an object of the conspiracy to prevent the discovery of the misrepresentation of the company's SDVOSB status.

Manner and Means

17. The manner and means by which the Defendants **MAX R. TAFOYA**, **TYLER COLE**, and others known and unknown to the Grand Jury sought to accomplish the object of the conspiracy included, among other things, the following:

a. Defendant **MAX R. TAFOYA** agreed to pay Andrew Castillo to allow his name and his service-disabled status to be used by M.R. Tafoya Construction in its bids for and performance of government contracts that were designated for SDVOSBs.

b. Defendant **TYLER COLE** completed certifications stating that M.R. Tafoya Construction was an SDVOSB and submitted them to government agencies, including the VA, in connection with efforts to obtain SDVOSB contracts for M.R. Tafoya Construction.

c. Defendants **MAX R. TAFOYA** and **TYLER COLE** employed various deceptive devices to create the appearance that Andrew Castillo was the owner and controller of M.R. Tafoya Construction, when in fact he did not own or operate the company.

Overt Acts

Overt acts committed during the course of the conspiracy include the following:

18. In or about the fall of 2008, Defendant **MAX R. TAFOYA** offered to pay Andrew Castillo \$600 per week for the use of his name and disability status in connection with government contracts.

19. In or about December 2008, Defendant **MAX R. TAFOYA** requested that Andrew Castillo send him documentation of his disability status.

20. On or about December 11, 2008, Andrew Castillo sent to Defendant **MAX R. TAFOYA** documentation of his disability status via interstate facsimile.

21. On or about December 11, 2008, Defendant **TYLER COLE** sent an email to a contracting officer at the VA claiming that as of that morning, Andrew Castillo was the 51% owner of M.R. Tafoya Construction.

22. On or about December 11, 2008, Defendant **TYLER COLE** updated M.R. Tafoya Construction's entries in the Vetbiz and Central Contractor Registration (CCR) registries to claim SDVOSB status for M.R. Tafoya Construction.

23. On or about December 12, 2008, Defendant **TYLER COLE** updated M.R. Tafoya Construction's entry in the Small Business Administration registry to claim that Andrew Castillo was President of M.R. Tafoya Construction and to claim SDVOSB status for M.R. Tafoya Construction.

24. On or about February 24, 2009, Defendant **MAX R. TAFOYA** signed as President a bid bond in relation to a proposal to obtain contract number VA 786 AC 0121, a contract for which only SDVOSBs were eligible.

25. On or about March 6, 2009, Defendant **TYLER COLE** signed an offer on behalf of M.R. Tafoya Construction to perform the work for contract number VA 786 AC 0121, a contract for which only SDVOSBs were eligible.

26. On or about May 19, 2009, Defendant **MAX R. TAFOYA** signed as President a bid bond in relation to a proposal to obtain contract number VA 786 AC 0142, a contract for which only SDVOSBs were eligible.

27. On or about June 18, 2009, Defendant **TYLER COLE** signed an offer on behalf

of M.R. Tafoya Construction to perform the work for contract number VA 786 AC 0142, a contract for which only SDVOSBs were eligible.

28. On or about August 18, 2009, Defendant **TYLER COLE** updated M.R. Tafoya Construction's profile in the VetBiz registry, falsely listing Andrew Castillo as the 51% owner of this business and falsely listing Andrew Castillo's email address as max@mrthh.com.

29. In or about April 2010, Defendant **MAX R. TAFOYA** signed the following documents intended to make it appear that Andrew Castillo was the 51% owner of M.R. Tafoya Construction: a Stock Purchase Agreement, a Promissory Note, a Security Agreement, a Pledge Agreement, a Shareholders' Cross-Purchase Agreement, Unanimous Written Consent of Shareholders of M.R. Tafoya Construction, Inc. In Lieu of Meeting, and the Amended Bylaws of M.R. Tafoya Construction, Inc.

30. In or about April 2010, Defendant **MAX R. TAFOYA** signed a corporate document entitled "Action Without Meeting of Board of Directors of M.R. Tafoya Construction, Inc.," which was designed to make it appear that Andrew Castillo had been elected President of M.R. Tafoya Construction.

31. In or about April 2010, the signature of Andrew Castillo was forged on the following documents: Stock Purchase Agreement, Promissory Note, Security Agreement, Pledge Agreement, Shareholders' Cross-Purchase Agreement, Unanimous Written Consent of Shareholders of M.R. Tafoya Construction, Inc. In Lieu of Meeting, and Action Without Meeting of Board of Directors of M.R. Tafoya Construction, Inc.

32. On or about June 10, 2010, the signature of Andrew Castillo was forged on an offer on behalf of M.R. Tafoya Construction to perform the work for contract number VA 786

RA 0333, a contract for which only SDVOSBs were eligible.

33. On or about June 10, 2010, the signature of Andrew Castillo was forged on an offer on behalf of M.R. Tafoya Construction to perform the work for contract number VA 786 AC 0337, a contract for which only SDVOSBs were eligible.

34. On or about July 19, 2010, the signature of Andrew Castillo was forged on an offer on behalf of M.R. Tafoya Construction to perform the work for contract number VA 786 AC 0345, a contract for which only SDVOSBs were eligible.

35. In or about February 2011, Defendant **MAX R. TAFOYA** asked Andrew Castillo to sign a document titled Power of Attorney, backdated to November 26, 2008, which appeared to give to Defendants **MAX R. TAFOYA** and **TYLER COLE** the authority to act on Andrew Castillo's behalf in several respects.

36. In or about February 2011, Defendant **MAX R. TAFOYA** asked Andrew Castillo to sign the following documents, backdated to December 18, 2009, intended to make it appear that he was the true owner of M.R. Tafoya Construction: a Stock Purchase Agreement, a Promissory Note, a Security Agreement, a Pledge Agreement, a Shareholders' Cross-Purchase Agreement, and the Amended Bylaws of M.R. Tafoya Construction, Inc.

37. Between on or about June 5, 2009 and September 23, 2011, Andrew Castillo accepted approximately \$66,645 in weekly payments sent by interstate wire into his bank account.

In violation of 18 U.S.C. § 371.

Counts 2-5

From in or about December 2008, through in or about August 2010, in the District of



New Mexico and elsewhere, Defendants **MAX R. TAFOYA** and **TYLER COLE** knowingly executed and attempted to execute a scheme and artifice with the intent to defraud the United States and to obtain money and property by means of false and fraudulent pretenses, presentations, and promises in a procurement of services as a prime contractor with the United States, where the value of such contract was \$1,000,000 and more, to wit:

Count 2	On or about March 16, 2009, Defendants <b>MAX R. TAFOYA</b> and <b>TYLER COLE</b> , having falsely represented to the VA that M.R. Tafoya Construction was a service-disabled veteran owned small business, obtained for M.R. Tafoya Construction a contract in the amount of \$3,740,935 to perform work for the VA in Fort Bliss, Texas.
Count 3	On or about June 18, 2009, Defendants <b>MAX R. TAFOYA</b> and <b>TYLER COLE</b> , having falsely represented to the VA that M.R. Tafoya Construction was a service-disabled veteran owned small business, obtained for M.R. Tafoya Construction a contract in the amount of \$1,424,324.73 to perform work for the VA in Fort Bliss, Texas.
Count 4	On or about June 23, 2010, Defendants <b>MAX R. TAFOYA</b> and <b>TYLER COLE</b> , having falsely represented to the VA that M.R. Tafoya Construction was a service-disabled veteran owned small business, obtained for M.R. Tafoya Construction a contract in the amount of \$2,640,000 to perform work for the VA in Fort Logan, Colorado.
Count 5	On or about July 27, 2010, Defendants <b>MAX R. TAFOYA</b> and <b>TYLER COLE</b> , having falsely represented to the VA that M.R. Tafoya Construction was a service-disabled veteran owned small business, obtained for M.R. Tafoya Construction a contract in the amount of \$3,080,000 to perform work for the VA in Jefferson Barracks, Missouri.

In violation of 18 U.S.C. §§ 1031 and 2(a).

Counts 6-9

On or about February 1, 2011, in the District of New Mexico, Defendant **MAX R. TAFOYA**, in a matter within the jurisdiction of the Office of Inspector General of the United States Department of Veterans Affairs, an agency within the executive branch of the Government

of the United States, knowingly and willfully made a materially false, fictitious, and fraudulent statement and representation, to wit:

Count 6	Defendant <b>MAX R. TAFOYA</b> claimed that Andrew Castillo initially paid \$100,000 towards his purchase of 51% of M.R. Tafoya Construction.
Count 7	Defendant <b>MAX R. TAFOYA</b> claimed that Andrew Castillo worked in the Albuquerque office of M.R. Tafoya Construction, where one of his duties was to manage the payroll of the company.
Count 8	Defendant <b>MAX R. TAFOYA</b> claimed that Andrew Castillo was, on that day, working at the construction site for the VA project at the Santa Fe National Cemetery in Santa Fe, New Mexico.
Count 9	Defendant <b>MAX R. TAFOYA</b> claimed that Andrew Castillo personally signed the VA contracts and bonding paperwork for projects at Fort Logan Cemetery, Jefferson Barracks National Cemetery, and the Santa Fe National Cemetery.

In violation of 18 U.S.C. § 1001(a).

FORFEITURE ALLEGATION

Upon conviction of the offense alleged in Count 1, Defendants **MAX R. TAFOYA** and **TYLER COLE** shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, any property, real and personal, constituting or derived from proceeds obtained directly or indirectly as a result of the offense alleged in Count 1 of this Indictment.

SUBSTITUTE ASSETS

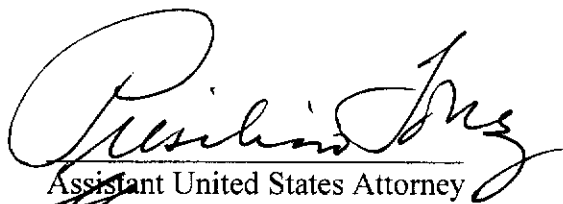
If any of the above described forfeitable property, as a result of any act or omission of Defendants:

- A. cannot be located upon exercise of due diligence;
- B. has been transferred or sold to, or deposited with, a third person;
- 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 which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b)(1) and 28 U.S.C. § 2461(c), to seek forfeiture of any other property of Defendants up to the value of the forfeitable property described above.

A TRUE BILL:

  
Assistant United States Attorney  
02/06/12 2:33pm

\_\_\_\_\_/s\_\_\_\_\_  
FOREPERSON OF THE GRAND JURY