

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL NO. 17-_____
 :
 v. : Date Filed: _____, 2017
 :
 DONALD "D.A." JONES : VIOLATIONS:
 KENNETH SMUKLER : 18 U.S.C. § 371 (conspiracy—1
 : count)
 : 52 U.S.C. §§ 30109(d)(1)(A)(i) &
 : 30116(f), 18 U.S.C. § 2 (causing
 : unlawful campaign
 : contributions—1 count)
 : 52 U.S.C. §§ 30104(a)(1),
 : 30104(b)(5)(A), &
 : 30109(d)(1)(A)(i), and 18 U.S.C. §
 : 2 (causing false campaign
 : expenditure reports—2 counts)
 : 18 U.S.C. §§ 2 & 1001(a)(1)
 : (causing false statements—1
 : count)
 : 18 U.S.C. § 1001(a)(2) (false
 : statements—1 count)

INDICTMENT

COUNT ONE

THE GRAND JURY CHARGES THAT:

All dates and times in this indictment are alleged to be "on or about" the specific date stated.

At all times material to this indictment:

1. Candidate A was a candidate for the Democratic Party's nomination for Member of the United States House of Representatives ("House") in the 2012 primary election, which was held on or about April 24, 2012.

2. “Candidate A for Congress” was Candidate A’s authorized campaign committee for the Office of Member of the United States House of Representatives.

3. Jimmie Moore, charged elsewhere, was Candidate A’s opponent in the 2012 Democratic primary.

4. “Jimmie Moore for Congress” was Jimmie Moore’s authorized campaign committee for the Office of Member of the United States House of Representatives.

5. Carolyn Cavaness, charged elsewhere, was a member of Moore’s campaign staff in the 2012 race for the House.

6. Defendant KENNETH SMUKLER was a political analyst, consultant, and close associate of Candidate A. Defendant SMUKLER owned and operated several companies including Voter Link Data Systems (“VLDS”), which purported to provide political campaign services including consulting, analysis, and public relations.

7. Defendant DONALD “D.A.” JONES was a political analyst, consultant, and close associate of Candidate A. Defendant JONES owned and operated D. Jones & Associates, also known as D.A. Jones & Associates, which purported to provide political services including consulting, analysis, and public relations.

8. Campaign committees raise and spend money for the candidate the campaign committee represents. Money is raised from contributions, and spent on expenditures for the campaign.

9. The Federal Election Campaign Act of 1971, as amended, Title 52, United States Code, Sections 30101, et seq. (“Election Act”), limited financial influence in the election of candidates for federal office, including the office of Member of the United States House of

Representatives, and provided for public disclosure of the financing of federal election campaigns, as follows:

a. The Election Act limited the amount and source of money that may be contributed to a federal candidate or that candidate's authorized campaign committee ("contributions").

b. In 2012, the Election Act limited both primary and general election campaign contributions to \$2,500, for a total of \$5,000 from any individual to any one candidate in an election cycle.

c. In 2012, the Election Act limited contributions from one federal candidate's authorized committee to another federal candidate's authorized committee to \$2,000 per candidate for both the primary and general elections, for a combined total of \$4,000 in an election cycle.

d. The Election Act expressly states that contributions made through an intermediary are treated as contributions from the original payor. The Act also states that "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate... shall be considered to be a contribution to such candidate."

10. The Federal Election Commission ("FEC") was an agency and department of the United States with jurisdiction to enforce the limits and prohibitions of the Election Act, and to compile and publicly report accurate information about the source and amounts of contributions. The Election Act requires campaign committees to file quarterly campaign finance reports accurately disclosing activity related to contributions, expenditures, debts, and loans of the committee.

11. From in or about February 2012 to in or about June 2013, in the Eastern District of Pennsylvania and elsewhere, the defendants,

**DONALD "D.A." JONES and
KENNETH SMUKLER,**

conspired and agreed with each other, with Carolyn Cavaness, with Jimmie Moore, and with others known and unknown to the Grand Jury, to:

a. Willfully cause contributions to a campaign committee in excess of the limits of the Election Act, which aggregated \$25,000 and more in calendar year 2012 (in violation of 52 U.S.C. §§ 30109(d)(1)(A)(i) & 30116(f), and 18 U.S.C. § 2);

b. Willfully cause the submission of false expenditure reports of one or more authorized campaign committees to the FEC, which concerned no less than \$25,000 in calendar year 2012 (in violation of 52 U.S.C. §§ 30104(a)(1), 30104(b)(5)(A), & 30109(d)(1)(A)(i), and 18 U.S.C. § 2);

c. Knowingly and willfully falsify, conceal, and cover up by a trick, scheme, and device a material fact in a matter within the jurisdiction of the executive branch of the government of the United States (in violation of 18 U.S.C. §§ 2 and 1001(a)(1)); and

d. Knowingly cause the concealing, covering up, falsification, and making of false entries in records, documents, and tangible objects, with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of a department and agency of the United States, and in relation to and contemplation of such matter and case (in violation of 18 U.S.C. §§ 2 and 1519).

PURPOSES OF THE CONSPIRACY

12. It was a purpose of the conspiracy to facilitate unlawful campaign contributions from Candidate A for Congress to Jimmie Moore for Congress by using Candidate A for Congress campaign funds to pay Jimmie Moore for Congress campaign debts in exchange for Jimmie Moore's agreement to withdraw as Candidate A's opponent in the 2012 Democratic House primary election.

13. It was a purpose of the conspiracy to conceal these unlawful campaign contributions from the FEC and the public by causing Candidate A for Congress and Jimmie Moore for Congress to file false campaign finance reports.

14. It was a purpose of the conspiracy to conceal these unlawful campaign contributions from the FEC and the public by routing the payments through intermediary companies and by generating false invoices to disguise the true nature of the payments.

MANNER AND MEANS

15. The manner and means included the following:

a. The conspirators caused payments from Candidate A for Congress to pay off debts of Jimmie Moore for Congress totaling \$90,000, including debts owed to Jimmie Moore himself, in exchange for Jimmie Moore's agreement to withdraw from the primary election.

b. The conspirators used intermediary companies—VLDS, D. Jones & Associates, and CavaSense—to conceal the payments.

c. The conspirators concealed the payments by creating false invoices stating that the payments were made for the purpose of purchasing a poll from CavaSense that

was already in the possession of Candidate A, KENNETH SMUKLER, and D.A. JONES, and for the purpose of compensation for consulting services that were never actually performed.

d. The conspirators caused Candidate A for Congress to submit reports to the FEC falsely listing the recipients of the campaign expenditures as VLDS and D. Jones & Associates and describing the purpose of the expenditures as payments for consulting and polling.

e. The conspirators caused Jimmie Moore for Congress to submit reports to the FEC falsely omitting any mention of the excessive contributions from Candidate A for Congress, VLDS, or D. Jones & Associates and falsely omitting any mention of the payments on the campaign debts using the funds from Candidate A for Congress.

OVERT ACTS

16. In furtherance of the conspiracy, and to accomplish its purpose, the defendants,

DONALD "D.A." JONES and KENNETH SMUKLER,

and Carolyn Cavaness, Jimmie Moore, and others known and unknown to the Grand Jury, committed the following overt acts, among others, in the Eastern District of Pennsylvania and elsewhere.

a. In or about February 2012, Candidate A and Jimmie Moore agreed that Candidate A would use Candidate A for Congress campaign funds to pay off some Jimmie Moore for Congress campaign debts in exchange for Moore's agreement to withdraw from the primary election.

b. In that conversation, Candidate A and Jimmie Moore agreed and understood that the payment from Candidate A for Congress to Jimmie Moore for Congress

would be disguised, and the deception would include hiding at least some of the Candidate A for Congress campaign funds as the purchase of a poll analyzing the primary matchup between Candidate A and Moore, notwithstanding the fact that Candidate A was already in possession of this same poll.

c. On or about February 29, 2012, Jimmie Moore announced his withdrawal from the Democratic primary.

d. In or about March 2012, Carolyn Cavaness and Jimmie Moore prepared a list of debts owed by the Jimmie Moore for Congress campaign, including nearly \$90,000 owed to Moore himself and nearly \$35,000 owed to Cavaness, for the purpose of providing Candidate A with an estimate of those debts.

e. Between in or about March 2012 and in or about June 2012, Candidate A confirmed with Moore through an intermediary that the specific amount of money that Candidate A was willing to provide in Candidate A for Congress campaign funds to help pay campaign debts of the Jimmie Moore for Congress campaign was \$90,000.

f. Between in or about March 2012 and in or about June 2012, defendant KENNETH SMUKLER told Jimmie Moore that Candidate A for Congress would make three payments to help repay the campaign debts of Jimmie Moore for Congress, that the first two payments would be justified by the purported purchase of a poll, as agreed in the February 2012 conversation between Candidate A and Jimmie Moore, and that the third payment would be justified by a purported consulting contract with D. Jones & Associates, the consulting company of defendant D.A. JONES. To effectuate the scheme, defendant SMUCKLER instructed Moore to create a shell company to receive the funds from Candidate A for Congress.

g. In or about May 2012, Jimmie Moore directed Carolyn Cavaness to create a company, CavaSense, for the sole purpose of receiving the promised Candidate A for Congress campaign funds, using a false address for the company on the incorporation documents.

h. In or about May 2012, Carolyn Cavaness was contacted by defendant KENNETH SMUKLER, who told Cavaness to create false invoices stating that CavaSense was selling a poll to defendant SMUKLER's company VLDS in order to provide a justification for the first two payments of campaign funds from Candidate A for Congress, one in the amount of \$40,000 and one in the amount of \$25,000.

i. Between in or about May 2012 and in or about June 2012, Carolyn Cavaness, at Jimmie Moore's direction, created the invoices requested by defendant KENNETH SMUKLER, notwithstanding the facts that: (1) the poll in question was owned by Moore and not by CavaSense; (2) the poll in question was over a year old; (3) the poll in question analyzed Candidate A's chances in a primary election that had already ended against an opponent who had already withdrawn; (4) Candidate A was already in possession of a nearly identical version of the poll; and (5) the actual cost of the poll was less than the total amount inserted into the fake invoices at defendant SMUKLER's direction.

j. On or about May 30, 2012, Carolyn Cavaness, at Jimmie Moore's direction, emailed defendant KENNETH SMUKLER an agreement between CavaSense and VLDS stating that: (1) CavaSense would deliver a "poll memo" to VLDS by June 12, 2012; (2) VLDS would pay CavaSense \$40,000 by June 15, 2012; (3) CavaSense would deliver "cross tabs" to VLDS by June 26, 2012; (4) VLDS would pay CavaSense \$25,000 by July 2, 2012; and

(5) “[u]pon receipt of the full proposed fee agreement, CavaSense and Associates, LLC, will cease distribution of said poll memo and cross tabs.”

k. On or about June 4, 2012, Carolyn Cavaness, at Jimmie Moore’s direction, emailed defendant KENNETH SMUKLER two invoices from CavaSense to VLDS, requesting two payments—one for \$40,000 and one for \$25,000—in exchange for the poll.

l. On or about June 11, 2012, the conspirators caused Candidate A for Congress to send check number 1358 in the amount of \$40,000 to VLDS.

m. On or about June 13, 2012, defendant KENNETH SMUKLER caused VLDS to send check number 6689 in the amount of \$40,000 to Carolyn Cavaness with the memo line, “Poll.”

n. On or about June 18, 2012, Carolyn Cavaness, at Jimmie Moore’s direction, emailed defendant KENNETH SMUKLER a copy of the poll memo that was already in the possession of Candidate A, D.A. JONES, and SMUKLER.

o. On or about July 13, 2012, the conspirators caused Candidate A for Congress to file a campaign finance report with the FEC falsely describing the \$40,000 expenditure as a payment to VLDS for “Survey and Polling Services,” omitting any mention of Carolyn Cavaness, Jimmie Moore for Congress, or the agreement between Candidate A and Jimmie Moore.

p. On or about July 24, 2012, the conspirators caused Candidate A for Congress to file a campaign finance report with the FEC falsely describing the \$40,000 expenditure as a payment to VLDS for “Survey and Polling Services,” omitting any mention of Carolyn Cavaness, Jimmie Moore for Congress, or the agreement between Candidate A and Jimmie Moore.

q. On or about December 11, 2012, the conspirators caused Candidate A for Congress to file a campaign finance report with the FEC falsely describing the \$40,000 expenditure as a payment to VLDS for "Survey and Polling Services," omitting any mention of Carolyn Cavaness, Jimmie Moore for Congress, or the agreement between Candidate A and Jimmie Moore.

r. On or about July 10, 2012, the conspirators caused Candidate A for Congress to send check number 1367 in the amount of \$25,000 to VLDS.

s. On or about July 17, 2012, defendant KENNETH SMUKLER caused VLDS to send check number 6688 in the amount of \$25,000 to Cavaness with the memo line, "Poll."

t. On or about August 6, 2012, Carolyn Cavaness, at Jimmie Moore's direction, emailed defendant KENNETH SMUKLER the data associated with the poll, the majority of which was already in the possession of Candidate A, D.A. JONES, and SMUKLER.

u. On or about October 15, 2012, the conspirators caused Candidate A for Congress to file a campaign finance report with the FEC falsely describing the \$25,000 expenditure as a payment to VLDS for "Acquisition of Cross Tabs," omitting any mention of Carolyn Cavaness, Jimmie Moore for Congress, or the agreement between Candidate A and Jimmie Moore.

v. On or about December 11, 2012, the conspirators caused Candidate A for Congress to file a campaign finance report with the FEC falsely describing the \$25,000 expenditure as a payment to VLDS for "Acquisition of Cross Tabs," omitting any mention of Carolyn Cavaness, Jimmie Moore for Congress, or the agreement between Candidate A and Jimmie Moore.

w. On or about June 20, 2012, Carolyn Cavaness, at Jimmie Moore's direction, emailed defendant D.A. JONES an invoice stating that D. Jones & Associates would pay CavaSense \$25,000 for "consulting services."

x. On or about August 23, 2012, the conspirators caused Candidate A for Congress to write check number 1386 to D. Jones & Associates in the amount of \$25,000.

y. On or about August 30, 2012, defendant D.A. JONES caused D. Jones and Associates to send check number 3327 to CavaSense in the amount of \$25,000 with the memo line, "Consulting," notwithstanding that neither Cavaness nor CavaSense did any work of any kind for defendant JONES, his company, or Candidate A for Congress.

z. On or about October 15, 2012, the conspirators caused Candidate A for Congress to file a campaign finance report with the FEC falsely describing the \$25,000 expenditure as a payment to Jones & Associates for "Political Consulting," omitting any mention of Carolyn Cavaness, CavaSense, Jimmie Moore for Congress, or the agreement between Candidate A and Jimmie Moore.

aa. On or about December 11, 2012, the conspirators caused Candidate A for Congress to file a campaign finance report with the FEC falsely describing the \$25,000 expenditure as a payment to Jones & Associates for "Political Consulting," omitting any mention of Carolyn Cavaness, CavaSense, Jimmie Moore for Congress, or the agreement between Candidate A and Jimmie Moore.

bb. Between June 2012 and September 2012, Carolyn Cavaness, at Jimmie Moore's direction, used \$21,000 of the money provided by Candidate A for Congress through VLDS and D. Jones & Associates to pay vendors who were owed money by Jimmie Moore for Congress.

cc. Between June 2012 and August 2012, Carolyn Cavaness, at Jimmie Moore's direction, gave \$19,500 of the money provided by Candidate A for Congress through VLDS and D. Jones & Associates to Moore via checks with the memo line, "Reimbursement."

dd. Carolyn Cavaness and Jimmie Moore kept the remainder of the money provided by Candidate A for Congress through VLDS and D. Jones & Associates in Cavaness's personal bank account.

ee. On or about October 9, 2012, the conspirators caused Jimmie Moore for Congress to file a campaign finance report with the FEC falsely omitting any mention of the payments to the campaign vendors, to Jimmie Moore, or to Carolyn Cavaness, instead listing all of those debts as they had appeared on earlier campaign finance reports notwithstanding that those debts had been paid in full or in part with Candidate A for Congress campaign funds.

ff. On or about June 6, 2013, the conspirators caused Jimmie Moore for Congress to file a campaign finance report with the FEC falsely omitting any mention of the payments to the campaign vendors, to Jimmie Moore, or to Carolyn Cavaness, instead listing all of those debts as they had appeared on earlier campaign finance reports notwithstanding that those debts had been paid in full or in part with Candidate A for Congress campaign funds.

gg. On or about October 9, 2012, the conspirators caused Jimmie Moore for Congress to file a campaign finance report with the FEC falsely omitting any mention of the \$40,000 payment received by Carolyn Cavaness on June 13, 2012; the \$25,000 payment received by Cavaness on July 17, 2012; or the \$25,000 payment received by CavaSense on

August 30, 2012, notwithstanding that those funds had been provided for the express purpose of paying debts owed by Jimmie Moore for Congress.

hh. On or about June 6, 2013, the conspirators caused Jimmie Moore for Congress to file a campaign finance report with the FEC falsely omitting any mention of the \$40,000 payment received by Carolyn Cavaness on June 13, 2012; the \$25,000 payment received by Cavaness on July 17, 2012; or the \$25,000 payment received by CavaSense on August 30, 2012, notwithstanding that those funds had been provided for the express purpose of paying debts owed by Jimmie Moore for Congress.

ii. In an effort to conceal the illicit nature of the \$25,000 payment from D. Jones & Associates to CavaSense, on or about May 5, 2017, JONES falsely told Special Agents of the FBI that Carolyn Cavaness performed work for D. Jones & Associates and Candidate A for Congress in exchange for the \$25,000 payment from D. Jones & Associates to CavaSense on or about August 30, 2012.

In violation of Title 18, United States Code, Section 371.

COUNT TWO

THE GRAND JURY FURTHER CHARGES THAT:

17. Paragraphs 1 through 15 and the overt acts of Count One are incorporated here.

18. From in or about February 2012 to in or about August 2012, in the Eastern District of Pennsylvania and elsewhere, the defendants,

**DONALD "D.A." JONES and
KENNETH SMUKLER,**

aided and abetted by each other and by Carolyn Cavaness, charged elsewhere, by Jimmie Moore, charged elsewhere, and by others known and unknown to the Grand Jury, willfully caused contributions to the Jimmie Moore for Congress campaign in excess of the limits of the Election Act, which aggregated \$25,000 and more in calendar year 2012, and did so by causing Candidate A for Congress to make contributions to Jimmie Moore for Congress in the form of payments of debts owed by Jimmie Moore for Congress to vendors, to Cavaness, and to Moore.

In violation of Title 52, United States Code, Sections 30109(d)(1)(A)(i) & 30116(f), and Title 18, United States Code, Section 2

COUNT THREE

THE GRAND JURY FURTHER CHARGES THAT:

19. Paragraphs 1 through 15 and the overt acts of Count One are incorporated here.

20. From in or about February 2012 to in or about December 2012, in the Eastern District of Pennsylvania and elsewhere, the defendants

**DONALD "D.A." JONES and
KENNETH SMUKLER,**

aided and abetted by each other, by Carolyn Cavaness, charged elsewhere, by Jimmie Moore, charged elsewhere, and by others known and unknown to the Grand Jury, willfully caused the authorized campaign committee of a candidate for the United States House of Representatives to falsely report to the FEC disbursements made by that committee over \$200, to wit causing Candidate A for Congress to report to the FEC disbursements to VLDS for "Survey and Polling Services" and "Acquisition of Cross Tabs" and a disbursement to D. Jones & Associates for "Political Consulting" that were in fact contributions to the Jimmie Moore for Congress campaign aggregating \$25,000 and more in calendar year 2012.

In violation of Title 52, United States Code, Sections 30104(a)(1), 30104(b)(5)(A), & 30109(d)(1)(A)(i), and Title 2, United States Code, Section 2.

COUNT FOUR

THE GRAND JURY FURTHER CHARGES THAT:

21. Paragraphs 1 through 15 and the overt acts of Count One are incorporated here.

22. From in or about February 2012 to in or about June 2013, in the Eastern District of Pennsylvania and elsewhere, the defendants

**DONALD "D.A." JONES and
KENNETH SMUKLER,**

aided and abetted by each other, by Carolyn Cavaness, charged elsewhere, by Jimmie Moore, charged elsewhere, and by others known and unknown to the Grand Jury, willfully caused the authorized campaign committee of a candidate for the United States House of Representatives to falsely omit from reports to the FEC the receipt of contributions over \$200, to wit causing the Jimmie Moore for Congress campaign to fail to report to the FEC contributions from the Candidate A for Congress campaign in the form of payment of debts owed by Jimmie Moore for Congress aggregating \$25,000 and more in calendar year 2012.

In violation of Title 52, United States Code, Sections 30104(a)(1), 30104(b)(5)(A), & 30109(d)(1)(A)(i), and Title 2, United States Code, Section 2.

COUNT FIVE

THE GRAND JURY FURTHER CHARGES THAT:

23. Paragraphs 1 through 15 and the overt acts of Count One are incorporated here.

24. From in or about February 2012 to in or about June 2013, in the Eastern District of Pennsylvania and elsewhere, the defendants,

**DONALD "D.A." JONES and
KENNETH SMUKLER,**

aided and abetted by each other, by Carolyn Cavaness, charged elsewhere, by Jimmie Moore, charged elsewhere, and by others known and unknown to the Grand Jury, knowingly and willfully falsified, concealed, and covered up by a trick, scheme, and device a material fact in a matter within the jurisdiction of the executive branch of the government of the United States, to wit causing Candidate A for Congress to report to the FEC disbursements to VLDS for "Survey and Polling Services" and "Acquisition of Cross Tabs" and a disbursement to D. Jones & Associates for "Political Consulting" that were in fact contributions to the Jimmie Moore for Congress campaign, and causing the Jimmie Moore for Congress campaign to fail to report to the FEC contributions from Candidate A for Congress in the form of payment of debts owed by Jimmie Moore for Congress.

In violation of Title 18, United States Code, Sections 2 and 1001(a)(1).

COUNT SIX

THE GRAND JURY FURTHER CHARGES THAT:

1. Paragraphs 1 through 15 and the overt acts of Count One are incorporated here.
2. On or about May 5, 2017, in the Eastern District of Pennsylvania, the defendant,


DONALD "D.A." JONES,

knowingly and willfully made a materially false, fictitious, and fraudulent statement or representation in a matter within the jurisdiction of the executive branch of the government of the United States, to wit, falsely telling Special Agents of the FBI that Carolyn Cavaness, charged elsewhere, performed work for D. Jones & Associates and Candidate A for Congress in exchange for the \$25,000 payment from D. Jones & Associates to CavaSense on or about August 30, 2012.

In violation of Title 18, United States Code, Section 1001(a)(2).

A TRUE BILL:

GRAND JURY FOREPERSON


LOUIS LAPPEN
Acting United States Attorney