

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DEC 29 2010



MATTHEW J. DYKMAN
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

**JOHN CHARLES MCCLUSKEY,
TRACY ALLEN PROVINCE, and
CASSLYN MAE WELCH,**

Defendants.

CRIMINAL NO. 10-2734

Count 1: 18 U.S.C. § 371:
Conspiracy to Commit Carjacking;

Count 2: 18 U.S.C. § 2119(3):
Carjacking Resulting in Death; 18
U.S.C. § 2: Aiding and Abetting;

Count 3: 18 U.S.C. §
1512(a)(1)(C): Tampering With a
Witness; 18 U.S.C. § 2: Aiding and
Abetting;

Count 4: 18 U.S.C. § 1951:
Conspiracy to Interfere with
Commerce;

Count 5: 18 U.S.C. § 1951:
Interference with Commerce; 18
U.S.C. § 2: Aiding and Abetting;

Counts 6-10: 18 U.S.C. §§
924(c)(1) and (j): Using and
Carrying Firearm During and in
Relation to Crime of Violence; 18
U.S.C. § 2: Aiding and Abetting;

Counts 11-12: 18 U.S.C. §§
922(g)(1) and 924(a)(2): Felon in
Possession of Firearms and
Ammunition;

Count 13: 18 U.S.C. §§ 922(g)(2)
and 924(a)(2): Fugitives in
Possession of Firearms and
Ammunition.

SUPERSEDING INDICTMENT

The Grand Jury charges:

Count 1

On or about August 2, 2010, in the District of New Mexico, the defendants, **JOHN CHARLES MCCLUSKEY, TRACY ALLEN PROVINCE, and CASSLYN MAE WELCH**, and others known and unknown to the grand jury, did unlawfully, knowingly, and intentionally conspire to carjack Gary Haas and Linda Haas, and as a result of this act, caused the deaths of Gary Haas and Linda Haas.

In furtherance of such agreement and conspiracy and to effect the objects thereof, the defendants committed the following overt acts, among others:

- a. On or about August 2, 2010, **JOHN CHARLES MCCLUSKEY, TRACY ALLEN PROVINCE, and CASSLYN MAE WELCH** agreed to take a 2006 Chevrolet pick-up truck and 30-foot trailer from a man and woman at a rest stop. This vehicle and trailer belonged to Gary Haas and Linda Haas.
- b. On or about August 2, 2010, **JOHN CHARLES MCCLUSKEY** and **TRACY ALLEN PROVINCE** approached Gary Haas and Linda Haas, forcing Linda Haas into the pick-up truck at gunpoint.
- c. On or about August 2, 2010, **JOHN CHARLES MCCLUSKEY** and **TRACY ALLEN PROVINCE** forced Gary Haas to drive the pick-up truck and trailer away from the rest stop, while **CASSLYN MAE WELCH** followed in another vehicle.
- d. On or about August 2, 2010, **JOHN CHARLES MCCLUSKEY** shot Gary

Haas and Linda Haas with a handgun, killing them both.

In violation of 18 U.S.C. § 371.

Count 2

On or about August 2, 2010, in the District of New Mexico, the defendants, **JOHN CHARLES MCCLUSKEY, TRACY ALLEN PROVINCE, and CASSLYN MAE WELCH**, with the intent to cause death and serious bodily harm, did take a motor vehicle, a 2006 Chevrolet Pick-Up Truck, Vehicle Identification Number 1GCHK23D36F235389, which had been transported, shipped and received in interstate commerce, from the person and presence of Gary Haas and Linda Haas by force and violence, and by intimidation, resulting in the deaths of Gary Haas and Linda Haas.

In violation of 18 U.S.C. §§ 2119 and 2.

Count 3

On or about August 2, 2010, in the District of New Mexico, the defendants, **JOHN CHARLES MCCLUSKEY, TRACY ALLEN PROVINCE, and CASSLYN MAE WELCH**, did knowingly kill Gary Haas and Linda Haas, with malice aforethought and premeditation, with the intent to prevent the communication to any law enforcement officer of the United States of information relating to the commission of Federal offenses, to wit: Conspiracy to Commit Carjacking as alleged in Count 1, Carjacking as alleged in Count 2, Conspiracy to Interfere with Commerce as alleged in Count 4, and Interference with Commerce as alleged in Count 5.

In violation of 18 U.S.C. §§ 1512(a)(1)(C) and 2.

Count 4

On or about August 2, 2010, in the District of New Mexico, the defendants, **JOHN CHARLES MCCLUSKEY, TRACY ALLEN PROVINCE, and CASSLYN MAE WELCH**, did unlawfully conspire to obstruct, delay and affect commerce as that term is defined in Title 18, United States Code, Section 1951, and the movement of articles and commodities in such commerce, by robbery as that term is defined in Section 1951, in that the defendants did unlawfully conspire and agree to rob and take and obtain personal property to wit: a 2006 Chevrolet Pick-up Truck, Vehicle Identification Number 1GCHK23D36F235389, a camper trailer, Vehicle Identification Number 4YDT2752132034867, a sum of United States currency, a Glock, Model 36, .45 caliber semi-automatic handgun, serial number DVU736US, a Glock, Model 17, 9mm semi-automatic handgun, serial number AK548US, and a Rossi, .38 caliber handgun, serial number W243613, from the presence of Gary Haas and Linda Haas, individuals engaged in interstate commerce, against the will of Gary Haas and Linda Haas, by means of actual and threatened force, violence, and fear of injury to their person.

In violation of 18 U.S.C. § 1951(a).

Count 5

On or about August 2, 2010, in the District of New Mexico, the defendants, **JOHN CHARLES MCCLUSKEY, TRACY ALLEN PROVINCE, and CASSLYN MAE WELCH**, did unlawfully obstruct, delay and affect commerce as that term is defined in Title 18, United States Code, Section 1951, and the movement of articles and commodities in such commerce, by robbery as that term is defined in Section 1951, in

that the defendants did unlawfully take and obtain personal property to wit: a 2006 Chevrolet Pick-up Truck, Vehicle Identification Number 1GCHK23D36F235389, a camper trailer, Vehicle Identification Number 4YDT2752132034867, a sum of United States currency, a Glock, Model 36, .45 caliber semi-automatic handgun, serial number DVU736US, a Glock, Model 17, 9mm semi-automatic handgun, serial number AK548US, and a Rossi, .38 caliber handgun, serial number W243613, from the presence of Gary Haas and Linda Haas, individuals engaged in interstate commerce, against the will of Gary Haas and Linda Haas, by means of actual and threatened force, violence, and fear of injury to their person.

In violation of 18 U.S.C. § 1951(a).

Count 6

On or about August 2, 2010, in the District of New Mexico, the defendants, **JOHN CHARLES MCCLUSKEY, TRACY ALLEN PROVINCE, and CASSLYN MAE WELCH**, did knowingly use and carry firearms, to wit: a Smith and Wesson, Model SW40VE, .40 caliber handgun, serial number DUM2735, and a Smith and Wesson, Model SW40VE, .40 caliber handgun, serial number PDB5557, during and in relation to a crime of violence for which the defendants may be prosecuted in a court of the United States, that is, Conspiracy to Commit Carjacking, as charged in Count 1 of the Indictment, and in the course of this violation caused the death of Gary Haas and Linda Haas through the use of the firearm, which killing is a murder as defined in 18 U.S.C. § 1111, in that the defendants did unlawfully kill Gary Haas and Linda Haas by shooting them with the firearm willfully, deliberately, and with premeditation and malice

aforethought.

In violation of 18 U.S.C. §§ 924(c)(1) and (j)(1) and 18 U.S.C. § 2.

Count 7

On or about August 2, 2010, in the District of New Mexico, the defendants, **JOHN CHARLES MCCLUSKEY, TRACY ALLEN PROVINCE, and CASSLYN MAE WELCH**, did knowingly use and carry firearms, to wit: a Smith and Wesson, Model SW40VE, .40 caliber handgun, serial number DUM2735, and a Smith and Wesson, Model SW40VE, .40 caliber handgun, serial number PDB5557, during and in relation to a crime of violence for which the defendants may be prosecuted in a court of the United States, that is, Carjacking, as charged in Count 2 of the Indictment, and in the course of this violation caused the death of Gary Haas and Linda Haas through the use of the firearm, which killing is a murder as defined in 18 U.S.C. § 1111, in that the defendants did unlawfully kill Gary Haas and Linda Haas by shooting them with the firearm willfully, deliberately, and with premeditation and malice aforethought.

In violation of 18 U.S.C. §§ 924(c)(1) and (j)(1) and 18 U.S.C. § 2.

Count 8

On or about August 2, 2010, in the District of New Mexico, the defendants, **JOHN CHARLES MCCLUSKEY, TRACY ALLEN PROVINCE, and CASSLYN MAE WELCH**, did knowingly use and carry firearms, to wit: a Smith and Wesson, Model SW40VE, .40 caliber handgun, serial number DUM2735, and a Smith and Wesson, Model SW40VE, .40 caliber handgun, serial number PDB5557, during and in relation to a crime of violence for which the defendants may be prosecuted in a court of the United

States, that is, Tampering With a Witness, as charged in Count 3 of the Indictment, and in the course of this violation caused the death of Gary Haas and Linda Haas through the use of the firearm, which killing is a murder as defined in 18 U.S.C. § 1111, in that the defendants did unlawfully kill Gary Haas and Linda Haas by shooting them with the firearm willfully, deliberately, and with premeditation and malice aforethought.

In violation of 18 U.S.C. §§ 924(c)(1) and (j)(1) and 18 U.S.C. § 2.

Count 9

On or about August 2, 2010, in the District of New Mexico, the defendants, **JOHN CHARLES MCCLUSKEY, TRACY ALLEN PROVINCE, and CASSLYN MAE WELCH**, did knowingly use and carry firearms, to wit: a Smith and Wesson, Model SW40VE, .40 caliber handgun, serial number DUM2735, and a Smith and Wesson, Model SW40VE, .40 caliber handgun, serial number PDB5557, during and in relation to a crime of violence for which the defendants may be prosecuted in a court of the United States, that is, Conspiracy to Commit Interference with Interstate Commerce by Robbery, as charged in Count 4 of the Indictment, and in the course of this violation caused the death of Gary Haas and Linda Haas through the use of the firearm, which killing is a murder as defined in 18 U.S.C. § 1111, in that the defendants did unlawfully kill Gary Haas and Linda Haas by shooting them with the firearm willfully, deliberately, and with premeditation and malice aforethought.

In violation of 18 U.S.C. §§ 924(c)(1) and (j)(1) and 18 U.S.C. § 2.

Count 10

On or about August 2, 2010, in the District of New Mexico, the defendants,

JOHN CHARLES MCCLUSKEY, TRACY ALLEN PROVINCE, and CASSLYN MAE WELCH, did knowingly use and carry firearms, to wit: a Smith and Wesson, Model SW40VE, .40 caliber handgun, serial number DUM2735, and a Smith and Wesson, Model SW40VE, .40 caliber handgun, serial number PDB5557, during and in relation to a crime of violence for which the defendants may be prosecuted in a court of the United States, that is, Interference with Interstate Commerce by Violence, as charged in Count 5 of the Indictment, and in the course of this violation caused the death of Gary Haas and Linda Haas through the use of the firearm, which killing is a murder as defined in 18 U.S.C. § 1111, in that the defendants did unlawfully kill Gary Haas and Linda Haas by shooting them with the firearm willfully, deliberately, and with premeditation and malice aforethought.

In violation of 18 U.S.C. §§ 924(c)(1) and (j)(1) and 18 U.S.C. § 2.

Count 11

On or about August 2, 2010, in the District of New Mexico, the defendant, **JOHN CHARLES MCCLUSKEY**, a person who had been convicted of felony crimes punishable by imprisonment for a term exceeding one year, to wit: attempted second degree murder in Case No. CR2009-118185 in Maricopa County, Arizona; and robbery in Case No. CR 1992-502DT in Dauphin County, Pennsylvania, did knowingly possess, in and affecting commerce, firearms, a Smith and Wesson, model SW40VE, .40 caliber handgun, serial number DUM2735, a Smith and Wesson, model SW40VE, .40 caliber handgun, serial number PDB5557; approximately 25 rounds of Blazer .40 caliber ammunition, approximately 13 rounds of Winchester .40 caliber ammunition,

approximately 4 rounds of Remington 9mm ammunition, approximately 5 rounds of Federal 9mm ammunition, approximately 5 rounds of Winchester 9mm ammunition, approximately 1 round of PMC 9mm ammunition, approximately 1 round of 9-PACP 9mm caliber ammunition, a Glock, model 36, .45 caliber handgun, serial number DVU736US, approximately 99 rounds of Winchester .45 caliber ammunition, and approximately 12 rounds of Federal .45 caliber ammunition.

In violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2).

Count 12

On or about August 2, 2010, in the District of New Mexico, the defendant, **TRACY ALLEN PROVINCE**, a person who had been convicted of a felony crime punishable by imprisonment for a term exceeding one year, to wit: homicide in Case No. CA 1992-0154 in Pima County, Arizona, did knowingly possess, in and affecting commerce, firearms, a Smith and Wesson, model SW40VE, .40 caliber handgun, serial number DUM2735; a Smith and Wesson, model SW40VE, .40 caliber handgun, serial number PDB5557; a Glock, model 17, 9mm semi-automatic handgun, serial number AK548US, approximately 10 rounds of CCI 9mm ammunition, approximately 14 rounds of Winchester 9mm ammunition, and approximately 14 rounds of unknown brand 9mm ammunition.

In violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2).

Count 13

On or about August 2, 2010, in the District of New Mexico, the defendants, **JOHN CHARLES MCCLUSKEY, TRACY ALLEN PROVINCE, and CASSLYN MAE**

WELCH, persons who were fugitives from justice, did knowingly possess, in and affecting commerce, firearms, a Smith and Wesson, model SW40VE, .40 caliber handgun, serial number DUM2735, a Smith and Wesson, model SW40VE, .40 caliber handgun, serial number PDB5557, a Glock, model 17, 9mm semi-automatic handgun, serial number AK548US, a Glock, model 36, .45 caliber handgun, serial number DVU736US, a Rossi, .38 caliber handgun, serial number W243613, approximately 25 rounds of Blazer .40 caliber ammunition, approximately 13 rounds of Winchester .40 caliber ammunition, approximately 99 rounds of Winchester .45 caliber ammunition, approximately 12 rounds of Federal .45 caliber ammunition, approximately 14 rounds of unknown brand 9mm ammunition, approximately 10 rounds of CCI 9mm ammunition, approximately 19 rounds of Winchester 9mm ammunition, approximately 4 rounds of Remington 9mm ammunition, approximately 5 rounds of Federal 9mm ammunition, approximately 1 round of PMC 9mm ammunition, approximately 1 round of 9-PACP 9mm ammunition, approximately 50 rounds of Remington .38 caliber ammunition, and approximately 4 rounds of ELD .38 caliber ammunition.

In violation of 18 U.S.C. §§ 922(g)(2) and 924(a)(2).

Notice of Special Findings

The grand jury repeats and realleges the accusations of Counts 2, 3, and 6 - 10 of the Superseding Indictment.

With respect to Counts 2, 3, and 6 - 10, the Grand Jury finds that the defendants, **JOHN CHARLES McCLUSKEY, TRACY ALLEN PROVINCE, and CASSLYN WELCH:**

- a. were 18 years of age or older at the time of the offenses charged in Counts 2, 3 and 6 - 10 (18 U.S.C. § 3591(a));
- b. intentionally killed Gary Haas and Linda Haas (18 U.S.C. § 3591(a)(2)(A));
- c. intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and Gary Haas and Linda Haas died as a direct result of the act (18 U.S.C. § 3591(a)(2)(C));
- d. intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and Gary Haas and Linda Haas died as a result of the act (18 U.S.C. § 3591(a)(2)(D));
- e. committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value (18 U.S.C. § 3592(c)(8));
- f. committed multiple killings in a single criminal episode (18 U.S.C. § 3592(c)(16)); AND

as to Defendant **JOHN CHARLES McCLUSKEY**:

- g. has previously been convicted of a violent felony involving a firearm which is punishable by a term of imprisonment of more than one year, to wit: attempted second degree murder (18 U.S.C. § 3592(c)(2));
- h. has previously been convicted of other serious offenses, to wit: robbery (18 U.S.C. § 3592(c)(4)); AND

