IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA

v.

ERIC UPCHURCH,

Defendant.

SUPERSEDING INDICTMENT

Case No. 23-cr-69-wmc
18 U.S.C. § 1343
18 U.S.C. § 1957(a)
18 U.S.C. § 1001(a)(3)
18 U.S.C. § 981(a)(1)(C)
18 U.S.C. § 982
28 U.S.C. § 2461(c)
21 U.S.C. § 853(p)
18 U.S.C. § 982(b)(1)

THE GRAND JURY CHARGES:

Background

At times material to this indictment:

The Small Business Administration

1. The Small Business Administration (SBA) was an executive branch agency of the United States government that provided support to entrepreneurs and small businesses. The mission of the SBA was to maintain and strengthen the nation's economy by enabling the establishment and viability of small businesses, as well as assisting in the economic recovery of communities after disasters.

2. As part of this effort, the SBA provided for loans through banks, credit unions, and other lenders. These loans had government-backed guarantees.

Paycheck Protection Program

3. The Coronavirus Aid, Relief, and Economic Security (CARES) Act was a federal law enacted in March 2020 and designed to provide emergency financial assistance to Americans suffering from the economic effects caused by the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of forgivable loans to small businesses for job retention and other authorized expenses through a program referred to as the Paycheck Protection Program (PPP).

4. To obtain a PPP loan, a qualifying business was required to submit a PPP loan application signed by an authorized representative of the business. The PPP loan application required the business, through its authorized representative, to acknowledge the program rules and make affirmative certifications in order to be eligible to obtain the PPP loan. In the PPP loan application, the small business, through its authorized representative, was required to state and certify among other things, its (1) average monthly payroll expenses, and (2) number of employees. These figures were used to calculate the amount of money the small business was eligible to receive under the PPP. In addition, businesses applying for a PPP loan were required to provide documentation, such as IRS tax returns and payroll reports, to verify their payroll expenses. Entities were also required to have been in operation on February 15, 2020, and either had employees for whom they paid salaries and payroll taxes or paid independent contractors, or they were an eligible self-employed individual, independent contractor, or sole proprietorship with no employees.

5. A PPP loan application was processed by a participating lending institution. If a PPP loan application was approved, the lender funded the PPP loan using its own monies, which were guaranteed by the SBA. This initial loan disbursement was referred to as a First Draw.

6. PPP loan proceeds were required to be used on certain permissible expenses, including payroll costs, mortgage interest, rent, and utilities. Under the applicable PPP rules and guidance, the interest and principal on the PPP loan was eligible for forgiveness if the business spent the loan proceeds on these expense items within a designated period of time and used a certain portion of the loan towards payroll expenses.

7. PPP allowed certain borrowers that previously received a PPP loan to apply for a Second Draw PPP loan with the same general loan terms as their First Draw. Second Draw PPP loans could also be used for job retention and other authorized expenses. A borrower was eligible for a Second Draw PPP loan if the borrower (1) previously received a First Draw PPP loan and used the full amount only for authorized expenditures, (2) had no more than 300 employees, and (3) could demonstrate at least a 25% reduction in gross receipts between comparable quarters in 2019 and 2020.

Opportunity, Inc.

8. According to the Wisconsin Department of Financial Institutions (DFI), ERIC UPCHURCH registered Opportunity, Inc. as a domestic business on July 26, 2016. DFI listed ERIC UPCHURCH as Opportunity Inc.'s registered agent.

9. ERIC UPCHURCH opened bank accounts for Opportunity, Inc. at Summit Credit Union on January 20, 2017. ERIC UPCHURCH listed himself as the only authorized signer on the account.

10. Documents submitted to the Internal Revenue Service (IRS) showed that Opportunity, Inc. had several subsidiaries.

11. In 2018, Opportunity, Inc. reported grant income of $17,181 on the corporate tax return that ERIC UPCHURCH filed with the IRS.

12. In 2019, ERIC UPCHURCH requested an extension to file his personal and business tax returns.

13. The IRS had no records that Opportunity, Inc. paid wages to any employees in 2019.

Economic Empowerment Wisconsin

14. DFI had no documents for Economic Empowerment Wisconsin.

15. The IRS had no tax records that showed Economic Empowerment Wisconsin made a profit or paid employees in 2019.

16. ERIC UPCHURCH and Sharon Johnson opened bank accounts for Economic Empowerment Wisconsin at Summit Credit Union on November 27, 2020.

ERIC UPCHURCH and Sharon Johnson each owned 50% of the company, and they listed themselves as the authorized signers on the account.

Economic Empowerment Collaboration, Inc.

17. According to DFI, Economic Empowerment Collaboration, Inc. registered as a domestic business on June 3, 2020. DFI listed Opportunity, Inc. as Economic Empowerment Collaboration's registered agent.

18. The IRS had no tax records that showed Economic Empowerment Collaboration made a profit or paid employees in 2019.

Eric Upchurch Sole Proprietorship

19. ERIC UPCHURCH opened a personal savings and checking account at Summit Credit Union on April 5, 2016. ERIC UPCHURCH listed himself as the only authorized signer on the account.

20. In 2018, ERIC UPCHURCH filed a 2018 Schedule C-EZ tax form that reported a sole proprietorship called Movement Fund made a net profit of $8,727. UPCHURCH listed no other sole proprietorships on his tax forms.

One Red Feather

21. The IRS had no tax records that showed One Red Feather reported a profit or paid employees in 2019.

Madison Alliance for Black Economic Empowerment, Inc.

22. Madison Alliance for Black Economic Empowerment, Inc. (MABEE) registered as a domestic business with DFI on May 12, 2017. DFI listed ERIC UPCHURCH as MABEE's registered agent.

23. ERIC UPCHURCH opened a business savings and checking account for MABEE at Summit Credit Union on July 1, 2017. ERIC UPCHURCH listed himself as the only authorized signer on the account.

24. In 2018, MABEE reported grant income of $38,194 on Opportunity, Inc.'s tax return that ERIC UPCHURCH filed with the IRS.

25. The IRS had no tax records that showed MABEE paid a salary to any employees during 2019.

Young Gifted and Black Coalition, Inc.

26. Young, Gifted and Black Coalition, Inc. (YGBC) registered as a domestic business with DFI on May 15, 2015.

27. ERIC UPCHURCH opened a business savings and checking account for YGBC on January 20, 2017. ERIC UPCHURCH listed himself as the only authorized signer on the account.

28. The IRS had no tax records that showed YGBC made a profit or paid employees in 2019.

Young Gifted and Black, LLC

29. Young, Gifted, and Black, LLC (YGB, LLC) registered as a domestic business with DFI on January 20, 2017. DFI listed ERIC UPCHURCH as YGB, LLC's registered agent.

30. In 2018, YGB, LLC reported grant income of $4,563 on Opportunity, Inc.'s tax return that ERIC UPCHURCH filed with the IRS.

31. The IRS had no tax records that showed YGB, LLC paid any employees in 2019.

PPP Loan Applications

32. ERIC UPCHURCH submitted PPP loan applications on behalf of the following companies: (1) Opportunity, Inc.; (2) Economic Empowerment Wisconsin; (3) Economic Empowerment Collaboration; (4) Eric Upchurch Sole Proprietorship; (5) One Red Feather; (6) MABEE; (7) YGBC; and (8) YGB, LLC.

Scheme to Defraud

33. From in or about April 2020, and continuing to in or about April 2021, in the Western District of Wisconsin and elsewhere, the defendant,

ERIC UPCHURCH,

knowingly, and with intent to defraud, devised and participated in a scheme to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, promises, and by concealment of material facts.

Opportunity, Inc.

34. It was part of the scheme to defraud that on or about April 24, 2020, ERIC UPCHURCH, on behalf of Opportunity, Inc., submitted a PPP loan application to Summit Credit Union for $135,000.

35. It was further part of the scheme that on the PPP loan application, ERIC UPCHURCH falsely claimed that Opportunity, Inc. employed twelve people and had an average monthly payroll expense of $54,000.

36. It was further part of the scheme that, along with the PPP loan application, ERIC UPCHURCH provided Summit Credit Union with a fake profit and loss statement that falsely showed Opportunity, Inc. earned revenue of $1,017,875 and incurred expenses of $778,690.

37. SBA and Summit approved Opportunity, Inc.'s PPP loan application, and Summit Credit Union electronically deposited $135,000 into Opportunity Inc.'s business checking account on May 7, 2020.

Eric Upchurch – Sole Proprietorship (First Draw)

38. It was part of the scheme to defraud that on or about July 27, 2020, ERIC UPCHURCH, on behalf of a sole proprietorship, submitted a PPP loan application to Kabbage for $20,833.

39. It was further part of the scheme that ERIC UPCHURCH stated on the PPP loan application that his sole proprietorship employed one person and falsely stated that it had an average monthly payroll of $8,334.

40. It was further part of the scheme that ERIC UPCHURCH included a fake IRS Schedule C with the PPP loan application that falsely reported his sole proprietorship had a net profit of $152,923 in 2019.

41. SBA and Kabbage approved ERIC UPCHURCH's sole proprietorship PPP loan application, and Kabbage deposited $20,833 into ERIC UPCHURCH's Summit Credit Union personal bank account on July 29, 2020.

Madison Alliance for Black Economic Empowerment, Inc. (First Draw)

42. It was part of the scheme to defraud that on or about July 30, 2020, ERIC UPCHURCH, on behalf of MABEE, submitted a PPP loan application to Kabbage for $62,690.

43. It was further part of the scheme that ERIC UPCHURCH reported on the PPP loan application that MABEE employed one person and falsely stated that it had an average monthly payroll of $25,076.

44. It was further part of the scheme that ERIC UPCHURCH included a fake 2019 IRS Form W-3 for MABEE that falsely reported $284,041 in wages, tips, and other compensation paid to MABEE's employees.

45. SBA and Kabbage approved MABEE's PPP loan application, and Kabbage deposited $62,690 into MABEE's Summit Credit Union business bank account on August 3, 2020.

Eric Upchurch – Sole Proprietorship (Second Draw)

46. It was part of the scheme to defraud that on or about February 2, 2021, ERIC UPCHURCH, on behalf of his sole proprietorship, submitted a Second Draw PPP loan application to Kabbage for $20,833.

47. It was further part of the scheme that ERIC UPCHURCH reported on the Second Draw PPP loan application that his sole proprietorship employed one person and falsely stated that it had an average monthly payroll of $8,334.

48. SBA and Kabbage approved ERIC UPCHURCH's sole proprietorship Second Draw PPP loan application, and Kabbage deposited $20,833 into ERIC UPCHURCH's Summit Credit Union personal bank account on February 8, 2021.

Economic Empowerment Wisconsin (First Draw)

49. It was part of the scheme to defraud that on or about January 30, 2021, ERIC UPCHURCH, on behalf of Economic Empowerment Wisconsin, submitted a PPP loan application to Itria Ventures (Itria) for $20,833.

50. It was further part of the scheme that ERIC UPCHURCH claimed on the PPP loan application that Economic Empowerment Wisconsin employed one person and falsely stated that it had an average monthly payroll of $9,020.

51. It was further part of the scheme that ERIC UPCHURCH included a fake IRS Schedule C with the PPP loan application that falsely reported Economic Empowerment Wisconsin had a net profit of $111,204 in 2019.

52. SBA and Itria approved Economic Empowerment Wisconsin's PPP loan application. Itria deposited $20,833 into Economic Empowerment Wisconsin's bank account at Summit Credit Union on February 9, 2021.

Young, Gifted and Black Coalition (First Draw)

53. It was part of the scheme to defraud that on or about January 30, 2021, ERIC UPCHURCH, on behalf of YGBC, submitted a PPP loan application to Itria for $20,833.

54. It was further part of the scheme that ERIC UPCHURCH reported on the PPP loan application that YGBC employed one person and falsely stated that it had an average monthly payroll of $9,020.

55. It was further part of the scheme that ERIC UPCHURCH included a fake IRS Schedule C with the PPP loan application that falsely reported a net profit of $108,251 in 2019.

56. SBA and Itria approved YGBC's PPP loan application, and Itria deposited $20,833 into YGBC's Summit Credit Union business bank account on February 10, 2021.

Madison Alliance for Black Economic Empowerment, Inc. (Second Draw)

57. It was further part of the scheme that on or about March 24, 2021, ERIC UPCHURCH, on behalf of MABEE, submitted a Second Draw PPP loan application to Cross River Bank for $62,690.

58. It was further part of the scheme that ERIC UPCHURCH included a fake 2019 IRS Form 940 for MABEE that falsely reported total payments of $300,912 to all MABEE employees and $2,520 in total tax liability.

59. It was further part of the scheme that ERIC UPCHURCH submitted a fake 2019 IRS Form W-3 for MABEE with the PPP loan application that falsely reported $284,041 in wages, tips, and other compensation paid to MABEE's employees.

60. SBA and Cross River Bank approved MABEE's Second Draw PPP loan application, and Cross River Bank deposited $62,690 into MABEE's Summit Credit Union business account on March 26, 2021.

61. It was part of the scheme to defraud that on March 26, 2021, ERIC UPCHURCH transferred $20,000 of the PPP loan proceeds that MABEE received from Cross River Bank into his personal bank account at Summit Credit Union.

62. It was further part of the scheme that ERIC UPCHURCH wired the $20,000 of PPP loan proceeds from his personal bank account at Summit Credit Union into his account at Coinbase, Inc., which is located in California.

63. It was further part of the scheme that on March 26, 2021, ERIC UPCHURCH used $19,000 in PPP loan proceeds to purchase approximately 0.34417794 Bitcoin from Coinbase, Inc.

Young, Gifted and Black, LLC (Second Draw)

64. It was part of the scheme to defraud that on or about March 31, 2021, ERIC UPCHURCH, on behalf of YGB, LLC, submitted a Second Draw PPP loan application to Cross River Bank for $20,833.

65. It was further part of the scheme that ERIC UPCHURCH reported on the PPP loan application that YGB, LLC employed one person and falsely stated that it had an average monthly payroll of $8,333.

66. It was further part of the scheme that ERIC UPCHURCH included a fake IRS Schedule C with the PPP loan application that falsely reported YGBC had a net profit of $108,251 in 2019.

67. SBA and Cross River Bank approved YGB, LLC's Second Draw PPP loan application, and Cross River Bank deposited $20,833 into YGBC's Summit Credit Union business bank account on April 6, 2021.

Economic Empowerment Collaboration (Second Draw)

68. It was part of the scheme to defraud that on or about March 31, 2021, ERIC UPCHURCH, on behalf of Economic Empowerment Collaboration, submitted a Second Draw PPP loan application to Cross River Bank for $20,833.

69. It was further part of the scheme that ERIC UPCHURCH claimed that Economic Empowerment Collaboration employed one person and falsely stated that it had an average monthly payroll of $8,333.

70. It was further part of the scheme that ERIC UPCHURCH provided a fake IRS Schedule C with the PPP loan application that falsely reported Economic Empowerment Wisconsin had a net profit of $111,204 in 2019.

71. SBA and Cross River Bank approved Economic Empowerment Collaboration's Second Draw PPP loan application. Cross River Bank deposited $20,833 into Economic Empowerment Wisconsin's bank account at Summit Credit Union on April 16, 2021.

One Red Feather

72. It was part of the scheme to defraud that on or about March 18, 2021, ERIC UPCHURCH, on behalf of One Red Feather, submitted a PPP loan application to Cross River Bank for $20,833.

73. It was further part of the scheme that ERIC UPCHURCH reported on the PPP loan application that One Red Feather employed one person and falsely stated that it had an average monthly payroll of $8,333.

74. It was further part of the scheme that ERIC UPCHURCH included a fake IRS Schedule C with the PPP loan application that falsely claimed One Red Feather had a net profit of $123,611 in 2019.

75. SBA and Cross River Bank approved One Red Feather's PPP loan application, and Cross River Bank deposited $20,833 into ERIC UPCHURCH's Summit Credit Union personal bank account on April 19, 2021.

Total Amount of Fraudulent PPP Loans

76. ERIC UPCHURCH, through his businesses, received a total of $406,211 in fraudulent PPP loans:

Date of Deposit	PPP Loan Amount	Business	Bank
5/7/2020	$135,000	Opportunity, Inc.	Summit Credit Union
7/29/2020	$20,833	Sole Proprietorship	Kabbage
8/3/2020	$62,690	MABEE	Kabbage
2/8/2021	$20,833	Sole Proprietorship (Second Draw)	Kabbage
2/9/2021	$20,833	Economic Empowerment Wisconsin	Itria Ventures
2/10/2021	$20,833	Young, Gifted and Black Coalition	Itria Ventures
3/26/2021	$62,690	MABEE (Second Draw)	Cross River Bank
4/6/2021	$20,833	Young, Gifted and Black, LLC (Second Draw)	Cross River Bank
4/16/2021	$20,833	Economic Empowerment Collaboration (Second Draw)	Cross River Bank
4/19/2021	$20,833	One Red Feather	Cross River Bank
Total	**$406,211**		

77. ERIC UPCHURCH transferred PPP proceeds to various bank accounts. ERIC UPCHURCH then used the PPP proceeds to pay for unauthorized expenses.

COUNTS 1-5

78. On or about the dates listed below, in the Western District of Wisconsin and elsewhere, the defendant,

ERIC UPCHURCH,

for the purpose of executing this scheme, knowingly caused to be transmitted by means of wire communication in interstate commerce, the writings, signals, and pictures, described below for each count:

Count	Date of Deposit	Nature of Communication
1	2/8/2021	SOLE PROPRIETORSHIP (SECOND DRAW): Synovus Bank, on behalf of Kabbage, Inc., wired $20,833 in PPP loan proceeds to ERIC UPCHURCH's personal bank account at Summit Credit Union in Wisconsin. This caused electronic signals to be sent from Synovus Bank's servers in Georgia to Summit Credit Union's servers in Cottage Grove, Wisconsin.
2	3/26/2021	MABEE (SECOND DRAW): Cross River Bank wired $62,690 in PPP loan proceeds to MABEE's bank account at Summit Credit Union in Wisconsin. This caused electronic signals to be sent from Cross River Bank's servers in New Jersey to Summit Credit Union's servers in Cottage Grove, Wisconsin.
3	4/6/2021	YOUNG, GIFTED AND BLACK, LLC (SECOND DRAW): Cross River Bank wired $20,833 in PPP loan proceeds to YGBC's bank account at Summit Credit Union in Wisconsin. This caused electronic signals to be sent from Cross River Bank's servers in New Jersey to Summit Credit Union's servers in Cottage Grove, Wisconsin.

4	4/16/2021	ECONOMIC EMPOWERMENT COLLABORATION (SECOND DRAW): Cross River Bank wired $20,833 in PPP loan proceeds to Economic Empowerment Collaboration's bank account at Summit Credit Union in Wisconsin. This caused electronic signals to be sent from Cross River Bank's servers in New Jersey to Summit Credit Union's servers in Cottage Grove, Wisconsin.
5	4/19/2021	ONE RED FEATHER: Cross River Bank wired $20,833 in PPP loan proceeds to ERIC UPCHURCH's bank account at Summit Credit Union in Wisconsin. This caused electronic signals to be sent from Cross River Bank's servers in New Jersey to Summit Credit Union's servers in Cottage Grove, Wisconsin.

(All in violation of Title 18, United States Code, Section 1343).

COUNTS 6-11

79. Paragraphs 1 through 78 are incorporated here.

80. On or about the dates listed below, in the Western District of Wisconsin, the defendant,

ERIC UPCHURCH,

willfully and knowingly used the false writings and documents described below for each count, knowing the same contained a materially false, fictitious, and fraudulent statement and entry in a matter within the jurisdiction of the executive branch of the Government of the United States:

Count	Date	Nature of False Statement
6	4/24/2020	The defendant included a fake profit and loss statement with the PPP loan application for Opportunity, Inc. that falsely reported the company earned revenue of $1,017,875 and incurred expenses of $778,690 in 2019.
7	7/27/2020	The defendant included a fake IRS Schedule C with the First Draw PPP loan application for his sole proprietorship that falsely reported a net income of $152,923 for 2019.
8	7/30/2020	The defendant included a fake IRS Form W-3 with the First Draw PPP loan application for MABEE that falsely reported $284,041 in wages, tips, and other compensation paid to MABEE's employees in 2019.
9	1/30/2021	The defendant included a fake IRS Schedule C with the First Draw PPP loan application for Economic Empowerment Wisconsin that falsely reported the company had a net profit of $111,204 in 2019.
10	1/30/2021	The defendant included a fake IRS Schedule C with the First Draw PPP loan application for YGBC that falsely reported the company had a net profit of $108,251 in 2019.
11	3/18/2021	The defendant provided a fake IRS Schedule C with his PPP loan application for One Red Feather that falsely claimed the company had a net profit of $123,611 in 2019.

(All in violation of Title 18, United States Code, Section 1001(a)(3)).

COUNT 12

81. Paragraphs 1 through 78 are incorporated here.

82. On or about March 26, 2021, in the Western District of Wisconsin and elsewhere, the defendant,

ERIC UPCHURCH,

knowingly engaged in, and caused to be engaged in, monetary transactions, affecting interstate and foreign commerce, as described below, in criminally derived property of value greater than $10,000, such property having been derived from a specified unlawful activity, that is wire fraud, in violation of 18 U.S.C. § 1343, specifically, ERIC UPCHURCH wired $20,000 in PPP proceeds from his personal bank account at Summit Credit Union in Wisconsin to his account at Coinbase, Inc. in California and purchased Bitcoin valued at $19,000.

(In violation of Title 18, United States Code, Section 1957(a)).

FORFEITURE ALLEGATION

1. As a result of the offenses charged in Counts 1-5 of this indictment, the defendant, ERIC UPCHURCH, shall forfeit to the United States, pursuant to 18 U.S.C. §§ 981(a)(1)(C), 982 and 28 U.S.C. §2461(c), any property constituting or derived from proceeds obtained directly or indirectly as a result of the said violations. The property to be forfeited includes, but is not limited to a money judgment, specifically, a sum of money equal to $406,211 in United States currency, representing the amount of proceeds obtained as a result of the wire fraud.

2. If any of the property described above, as a result of any act or omission of the defendant:

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

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 divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1) and Title 28, United States Code, Section 2461(c).

A TRUE BILL

PRESIDING JUROR

Indictment returned: 2024-04-03

TIMOTHY M. O'SHEA
United States Attorney