

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA §
§
v. § No. 3:03-CR-270-N
§ (Supersedes Indictment filed on
TIMOTHY A. McMURRAY (1) § July 23, 2003 and April 21, 2004)
§
BRADLEY D. WOY (2) §
§
EDWARD M. STANTON (3) §
§
KENNY J. DAVIS (4) §
§
SUSAN McMURRAY (5) §

The Grand Jury charges:

INTRODUCTION

1. During the period covered by this Indictment:
 - (a) Smart-Mart, Inc., hereinafter referred to as "Smart-Mart" was incorporated in the State of Texas with offices in Dallas, Texas;
 - (b) Defendant **Timothy A. McMurray** was a founder of Smart-Mart and its President and Chief Executive Officer until his resignation during October, 1998, after which he continued with the company in a behind-the-scenes capacity into December, 1998;
 - (c) Defendant **Bradley D. Woy** was the Chief Operating Officer of Smart-Mart and its Chief Executive Officer after the resignation of defendant **Timothy A. McMurray**;
 - (d) Defendant **Edward M. Stanton** was a founder of Smart-Mart and its Senior

Vice President in charge of product procurement;

(e) Defendant **Kenny J. Davis** was a founder of Smart-Mart and its Vice-

President in charge of marketing;

(f) Defendant **Susan McMurray** was the Vice-President in charge of women's services for Smart-Mart;

(g) Smart-Mart was a retailer that sold name-brand products, at below retail prices, on the internet at its website: *smart-mart.com*; and

(h) Smart-Mart marketed its products only to individuals who purchased memberships in Smart-Mart.

2. Beginning at least as early as November, 1997, and continuing thereafter, at least until July, 1999, the exact dates being unknown to the Grand Jury, in the Dallas Division of the Northern District of Texas, and elsewhere, defendants **Timothy A. McMurray, Bradley D. Woy, Edward M. Stanton, Kenny J. Davis and Susan McMurray** unlawfully, knowingly, and with the intent to defraud, devised, intended to devise, joined and participated in, with others, known and unknown to the Grand Jury, a joint scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, representations and promises from persons throughout the United States and Canada, who could be, and were induced to purchase membership and invest money in Smart-Mart and purchase its stock.

3. It was part of the aforesaid joint scheme and artifice that, during November and December, 1997, Smart-Mart fraudulently acquired a loan and revolving line of credit

from Texas Commerce Bank National Association, Dallas, Texas, based upon the personal guarantees of defendants **Timothy A. McMurray, Edward M. Stanton, and Kenny J. Davis** for the purpose of carrying on the aforesaid joint scheme and artifice.

4. It was part of the aforesaid joint scheme and artifice that from in or about April, 1998, until in or about March, 1999, defendants **Timothy A. McMurray, Bradley D. Woy, Edward M. Stanton, Kenny J. Davis, Susan McMurray** and other participants in the aforesaid joint scheme and artifice solicited Smart-Mart members and others to invest in Smart-Mart by purchasing its stock.

5. It was further part of the aforesaid joint scheme and artifice that defendants **Timothy A. McMurray, Bradley D. Woy, Edward M. Stanton, Kenny J. Davis, Susan McMurray** and other participants in the joint scheme and artifice, in connection with the offer and sale of Smart-Mart stock, knowingly and with the intent to defraud, made, and caused to be made, materially false and fraudulent pretenses, representations and promises, including the following:

- (a) That funds invested in Smart-Mart would be used to fund the operation and development of its business;
- (b) That Smart-Mart was a thriving company positioned for substantial growth;
- (c) That Smart-Mart had hundreds of name-brand products coming on line that would boost sales;
- (d) That Smart-Mart was financially sound and had sufficient capital and resources to operate its business;

- (e) That defendant **Timothy A. McMurray** was a “startup and turnaround specialist” with vast business experience;
- (f) That Smart-Mart would have an “initial public offering” during the latter part of 1998 or early 1999 which would vastly increase the value of stock purchased during the private placement; and
- (g) That defendant **Bradley D. Woy** had “family money” and personally guaranteed that investors would not lose any money.

6. It was further part of the aforesaid joint scheme and artifice that defendants **Timothy A. McMurray, Bradley D. Woy, Edward M. Stanton, Kenny J. Davis and Susan McMurray**, in making representations to investors, and causing them to be made, omitted and failed to disclose material facts, including the following:

- (a) That Smart-Mart’s internet sales were minimal;
- (b) That Smart-Mart was insolvent and its main source of revenue came from the sale of memberships and stock;
- (c) That Smart-Mart had been put on a “cash only” basis by some vendors;
- (d) That defendant **Timothy A. McMurray** had been convicted in federal court for bank fraud and had no real experience that would qualify him as a start-up expert;
- (e) That Smart-Mart had few products to sell on its website and no real ongoing negotiations to secure any brand-name products;
- (f) That Smart-Mart had not taken the necessary steps toward an initial public offering and, based upon the financial situation of the company, such an offering would

be highly unlikely;

(g) That as of July, 1998, Smart-Mart was in default in repaying its aforesaid loans from Texas Commerce Bank National Association, totaling approximately \$123,000, and defendants **Timothy A. McMurray, Edward M. Stanton and Kenny J. Davis** had failed to fulfill their personal guarantees to the bank to pay the indebtedness;

(h) That defendant **Edward M. Stanton** was subject to an outstanding judgement entered against him by the Superior Court of California, County of San Diego, California, as a result of a failure to pay a \$35,000 Promissory Note issued to an investor in Axion Industries, Inc. and Provenance, Inc., signed by him as President of both companies and personally guaranteed by him;

(i) That defendants **Timothy A. McMurray and Susan McMurray** were subject to numerous outstanding federal tax liens that were filed against them by the Internal Revenue Service;

(j) That defendant **Timothy A. McMurray** was subject to an outstanding judgement entered against him by the United States District Court for the Western District of Missouri, in the amount of \$120,000, in favor of EXT, Inc., as a result of his failure to repay a loan to his company, New Color Concepts, which had been personally guaranteed by him;

(k) That defendant **Timothy A. McMurray** was subject to an outstanding judgement entered against him by the Dallas County District Court, 95th Judicial District, Texas, in the amount of \$113,000, in favor of American Fidelity Bank, as a result of his

operation of Legend Resources, Inc.;

(l) That defendant **Timothy A. McMurray** was subject to an outstanding judgement entered against him by the Jefferson Circuit Court, Jefferson County, Kentucky, in the amount of \$317,585.92, in favor of Citizens Fidelity Banks, as a result of a delinquent loan to his company, White Hawk Company, which had been personally guaranteed by him;

(m) That defendant **Timothy A. McMurray** was subject to an outstanding judgement entered against him by the District Court, 14th Judicial District, Dallas, Texas, in the amount of \$55,283.89, in favor of Campbell Center, as a result of the failure of his company, Preferred Capital Corporation, to pay its back-rent; and

(n) That money invested in Smart-Mart would be misapplied and converted to the use of defendants **Timothy A. McMurray, Bradley D. Woy, Edward M. Stanton, Kenny J. Davis, Susan McMurray** and others.

7. It was further part of the aforesaid joint scheme and artifice that Smart-Mart members and stockholders were told that they could receive commissions and bonuses by successfully recruiting new members and investors for Smart-Mart.

8. It was further part of the aforesaid joint scheme and artifice that defendants **Timothy A. McMurray, Bradley D. Woy, Edward M. Stanton, Kenny J. Davis and Susan McMurray** encouraged existing stockholders to invest additional money in Smart-Mart by purchasing additional stock.

9. It was further part of the aforesaid joint scheme and artifice that defendants

Timothy A. McMurray, Bradley D. Woy, Edward M. Stanton, Kenny J. Davis and Susan McMurray continued to make misrepresentations and false statements to existing investors and stockholders regarding the status of Smart-Mart and its business.

10. It was further part of the aforesaid joint scheme and artifice that defendants **Timothy A. McMurray, Bradley D. Woy, Edward M. Stanton, Kenny J. Davis, and Susan McMurray** hosted seminars throughout the United States touting the benefits of becoming a member of Smart-Mart and purchasing its stock.

11. It was further part of the aforesaid joint scheme and artifice that defendants **Timothy A. McMurray, Bradley D. Woy, Edward M. Stanton, Kenny J. Davis and Susan McMurray** misappropriated and converted to their own use, and the use of others, money invested in Smart-Mart.

12. It was further part of the aforesaid joint scheme and artifice that defendants **Timothy A. McMurray, Bradley D. Woy, Edward M. Stanton, Kenny J. Davis and Susan McMurray** defrauded vendors with whom Smart-Mart was doing business by ordering and receiving merchandise and, thereafter, not paying the vendors.

13. It was further part of the aforesaid joint scheme and artifice that defendants **Timothy A. McMurray, Bradley D. Woy, Edward M. Stanton, Kenny J. Davis and Susan McMurray** used the United States mail, interstate telephone and wire services, and commercial interstate carriers in executing and carrying out the aforesaid joint scheme and artifice.

COUNT ONE-TWO
Bank Fraud
(Violation of 18 U.S.C. § 1344)

1. The Grand Jury hereby adopts, realleges and incorporates by reference herein, all the allegations set forth in the Introduction of this Indictment.
2. It was further part of the aforesaid joint scheme and artifice that on or about November 3, 1997, in the Dallas Division of the Northern District of Texas, Smart-Mart executed a term promissory note, whereby Smart-Mart agreed to repay the resultant loan in the principal amount of \$54,976.06, in monthly installments, to Texas Commerce Bank National Association.
3. It was further part of the aforesaid joint scheme and artifice that on or about December 19, 1997, in the Dallas Division of the Northern District of Texas, Smart-Mart executed a revolving promissory note, whereby Smart-Mart agreed to repay the resultant loan, in the principal amount of \$65,000.00, in monthly installments, to Texas Commerce Bank National Association.
4. On or about each of the dates set forth below, in the Dallas Division of the Northern District of Texas, the indicated defendant(s), for the purpose of executing and carrying out the aforesaid joint scheme and artifice to defraud Texas Commerce Bank National Association and to obtain money, funds and credits owned by, and under the custody and control of Texas Commerce Bank National Association, by means of false and fraudulent pretenses and promises, did sign and submit a continuing unlimited guarantee to Texas Commerce Bank National Association, Dallas, Texas, the accounts of

which were insured by the Federal Deposit Insurance Corporation, in order to cause Texas Commerce Bank National Association to grant a loan to Smart-Mart, wherein each unconditionally guaranteed the prompt and complete payment to Texas Commerce Bank National Association of all indebtedness of Smart-Mart, knowing full well that he could not and would not honor said guarantee, each such submission constituting a separate count of this Indictment.

COUNT	DATE	DEFENDANTS
1	3 November 1997	Kenny J. Davis
2	19 December 1997	Edward M. Stanton and Timothy A. McMurrey

Each in violation of 18 U.S.C. § 1344.

COUNT THREE
Securities Fraud
(Violation of 15 USC §§77q(a) & 77x)

1. The Grand Jury hereby adopts, realleges and incorporates by reference herein, all the allegations set forth in the Introduction of this Indictment.
2. From in or about April, 1998, and continuing thereafter, at least until in or about March, 1999, the exact dates being unknown to the Grand Jury, in the Dallas Division of the Northern District of Texas, and elsewhere, defendants **Timothy A. McMurray, Bradley D. Woy, Edward M. Stanton, Kenny J. Davis and Susan McMurray**, in connection with the offer and sale of securities, to wit: Smart-Mart stock, by the use of transportation and communication in interstate and foreign commerce, directly and indirectly, employed the aforesaid joint scheme and artifice, and obtained money by means of untrue statements of material facts and omissions and failure to disclose material facts necessary in order to make statements and representations made, in light of the circumstances under which they were made, not misleading, and did engage in transactions, practices and course of business which operated as a fraud and deceit upon the purchasers, to wit: Smart-Mart stockholders.

In violation of 15 U.S.C. §§77q(a) and 77x.

COUNTS FOUR-EIGHT
 Wire Fraud
 (Violation of 18 U.S.C. §1343)

1. The Grand Jury hereby adopts, realleges and incorporates by reference herein, all the allegations set forth in the Introduction of this Indictment.

2. On or about each of the dates set forth below, in the Dallas Division of the Northern District of Texas, and elsewhere, defendants **Timothy A. McMurray, Bradley D. Woy, Edward M. Stanton, Kenny J. Davis and Susan McMurray**, for the purpose of executing and carrying out the aforesaid joint scheme and artifice, and attempting to do so, did knowingly, and with the intent to defraud, cause to be transmitted in interstate and foreign commerce, by means of wire and radio communications, certain writings, signs, signals and sounds constituting a facsimile transmission of a "Smart-Mart Check by Fax Authorization Form" from the indicated investor, in a state other than the State of Texas, to Smart-Mart in Dallas, Texas, to purchase Smart-Mart stock in the monetary amount indicated, each such facsimile transmittal constituting a separate count of this Indictment.

COUNT	DATE	INVESTOR	AMOUNT
4	28 October 1998	Jim Brewster El Dorado, AR	\$4,000
5	28 October 1998	Regina Brewster Shreveport, LA	\$7,500
6	28 October 1998	Becky House Antlers, OK	\$1,700
7	28 October 1998	Tom and Treca McCraken Noble, OK	\$2,150
8	23 November 1998	Milton D. Miefert Columbia, SC	\$2,000

Each in violation of 18 U.S.C. §1343.

COUNTS NINE-TWENTY-ONE
 Interstate Transportation of Money Taken By Fraud
 (Violation of 18 U.S.C. §§2314 and 2)

1. The Grand Jury hereby adopts, realleges and incorporates by reference herein, the allegations set forth in the Introduction of this Indictment.

2. On or about each of the dates set forth below, in the Dallas Division of the Northern District of Texas, and elsewhere, defendants **Timothy A. McMurray, Bradley D. Woy, Edward M. Stanton, Kenny J. Davis and Susan McMurray**, aided and abetted by each other, for the purpose of executing and carrying out the aforesaid joint scheme and artifice, and attempting to do so, did knowingly, willfully and with the intent to defraud, cause to be transported in interstate and foreign commerce, checks and drafts, each in the amount of \$5,000 or more, which were for the purchase of Smart-Mart stock, which checks were sent by the below-listed investor, from a state or country other than the State of Texas and delivered to Smart-Mart in Dallas, Texas, knowing the same to have been taken by fraud, each such transportation constituting a separate count of this Indictment.

COUNT	DATE	INVESTOR	AMOUNT
9	30 July 1998	Jackie Cogburn Lane, OK	\$5,000
10	27 October 1998	Jim Brewster El Dorado, AR	\$5,000
11	28 October 1998	Regina Brewster Shreveport, LA	\$7,500
12	29 July 1998	James or Vonda Perrin Pelican Rapids, MN	\$5,000

COUNT	DATE	INVESTOR	AMOUNT
13	30 July 1998	Diane Jacobson St. Cloud, MN	\$6,300
14	16 August 1998	James Hatcher Oklahoma City, OK	\$7,500
15	16 August 1998	James or Vonda Perrin Pelican Rapids, MN	\$5,000
16	24 August 1998	James Hatcher Oklahoma City, OK	\$10,000
17	24 August 1998	Randy Reimer Surrey, B.C. Canada	\$15,000
18	24 November 1998	William & Susan Schodorf Charlotte, NC	\$11,000
19	25 November 1998	Lake Union Defined Clinic Benefit Plan Dr. W. Carl Allen, Trustee Seattle, WA	\$20,000
20	27 November 1998	Joel E. Ohlson Charlotte, NC	\$10,000
21	31 December 1998	Dexter Tuttle, Jr. Charlotte, NC	\$20,000

Each in violation of 18 U.S.C. §§2314 and 2.

COUNTS TWENTY-TWO-TWENTY-SEVEN
 Interstate Transportation of Money Taken By Fraud
 (Violation of 18 U.S.C. §§2314 and 2)

1. The Grand Jury hereby adopts, realleges and incorporates by reference herein, the allegations set forth in the Introduction of this Indictment.
2. On or about each of the dates set forth below, in the Dallas Division of the Northern District of Texas, and elsewhere, defendants **Bradley D. Woy, Edward M. Stanton, Kenny J. Davis and Susan McMurray**, aided and abetted by each other, for the purpose of executing and carrying out the aforesaid joint scheme and artifice, and attempting to do so, did knowingly, willfully and with the intent to defraud, cause to be transported in interstate and foreign commerce, checks and drafts, each in the amount of \$5,000 or more, which were for the purchase of Smart-Mart stock, which check had been sent by the below-listed investor, from a state other than the State of Texas delivered to Smart-Mart in Dallas, Texas, knowing the same to have been taken by fraud, each such transportation constituting a separate count of this Indictment.

COUNT	DATE	INVESTOR	AMOUNT
22	15 January 1999	Chris Treadwell Lyden, WA	\$20,000
23	4 February 1999	Donald J. Sheller Morton, IL	\$20,000
24	5 February 1999	Danny & Janie Wilfong Wagoner, OK	\$15,000
25	5 February 1999	Carol O. Mitchell Germantown, TN	\$5,000
26	5 February 1999	John C. Tay Peoria, IL	6,000

COUNT	DATE	INVESTOR	AMOUNT
27	17 March 1999	Chris Wilfong Fort Smith, AR	10,500

Each in violation of 18 U.S.C. §§2314 and 2.

COUNTS TWENTY-EIGHT-FIFTY-ONE

Wire Fraud
 (Violation of 18 U.S.C. §1343)

1. The Grand Jury hereby adopts, realleges and incorporates by reference herein, all the allegations set forth in the Introduction of this Indictment.
2. On or about each of the dates set forth below, in the Dallas Division of the Northern District of Texas, defendants **Bradley D. Woy, Edward M. Stanton, Kenny J. Davis and Susan McMurray**, for the purpose of executing and carrying out the aforesaid joint scheme and artifice, and attempting to do so, did knowingly, and with the intent to defraud, cause to be transmitted in interstate and foreign commerce, by means of wire and radio communications, certain writings, signs, signals and sounds constituting a facsimile transmission of a "Smart-Mart Check by Fax Authorization Form" from the indicated investor, in a state or county other than the State of Texas, to Smart-Mart in Dallas, Texas, to purchase Smart-Mart stock in the approximate monetary amount indicated, each such facsimile transmittal constituting a separate count of this Indictment.

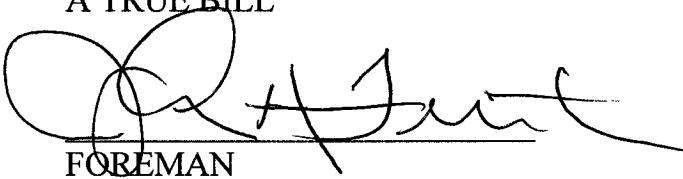
COUNT	DATE	INVESTOR	AMOUNT
28	12 January 1999	David Barnes Langley B.C. Canada	\$1,500
29	13 January 1999	Anthony Noe Charlotte, NC	\$1,000
30	13 January 1999	T.K. Robinette Cornelius, N.C.	\$1,000
31	2 February 1999	Barry V. Kimmell Shelocta, PA	\$12,000
32	2 February 1999	Kenneth Hamer Woodstock, IA	\$1,500

COUNT	DATE	INVESTOR	AMOUNT
33	2 February 1999	Clay Hansen Thor, IA	\$2,000
34	2 February 1999	Mel Sampson Eagle Grove, IA	\$9,500
35	3 February 1999	Kenneth H. Prince Detroit, MI	\$1,000
36	4 February 1999	Donald J. Sheller Morta, IL	\$20,000
37	4 February 1999	Claudia A. McMurdoock Waterloo, IA	\$4,000
38	5 February 1999	Dale Hovey East Peoria, IL	\$2,000
39	5 February 1999	William Buus Holland, IA	\$8,000
40	8 February 1999	Antonio Hendricks St. Thomas, VI	\$1,000
41	8 February 1999	Roberta Holmes Walnut Grove, MO	\$2,000
42	8 February 1999	Chris Wilfong Fort Smith, AR	\$10,500
43	9 February 1999	Jorita B. Billups Detroit, MI	\$1,000
44	9 February 1999	Joseph A. Gabriel Grand Rapids, MI	\$3,000
45	9 February 1999	Donna L. Prince Detroit, MI	\$2,000
46	9 February 1999	Mary L. Eskew St. Louis, MO	\$1,000
47	10 February 1999	Carol O. Mitchell Germantown, TN	\$5,000
48	10 February 1999	Shelonda Prince Seattle, WA	\$1,000

COUNT	DATE	INVESTOR	AMOUNT
49	10 February 1999	Jon & Sandy Gruett Vancouver, WA	\$3,000
50	11 February 1999	Ronald L. Smyres Sherwood, AR	\$3,000
51	15 February 1999	William A. Sizer Portland, OR	\$3,000

Each in violation of 18 U.S.C. §1343.

A TRUE BILL

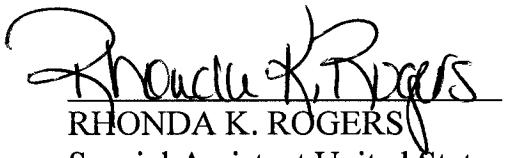


FOREMAN

JANE J. BOYLE
UNITED STATES ATTORNEY



LEONARD A. SENEROTE
Assistant United States Attorney
Texas Bar No. 18024700
1100 Commerce Street, Third Floor
Dallas, Texas 75242-1699
Telephone: 214.659.8669
Facsimile: 214.767.4100



RHONDA K. ROGERS
Special Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THE UNITED STATES OF AMERICA

VS.

TIMOTHY A. McMURRAY (1)
BRADLEY D. WOY (2)
EDWARD M. STANTON (3)
KENNY J. DAVIS (4)
SUSAN McMURRAY (5)

SUPERSEDING INDICTMENT

18 U.S.C. § 1344
Bank Fraud

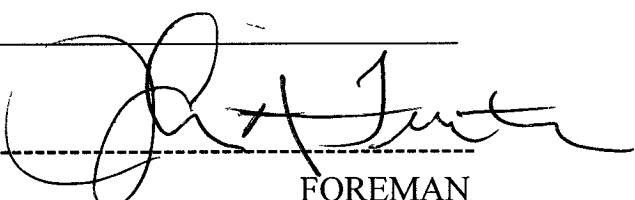
15 U.S.C. § 77q(a) & 77x
Securities Fraud

18 U.S.C. § 1343
Wire Fraud

18 U.S.C. §§ 2314 & 2
Interstate Transportation of Money Taken By Fraud

(51 Counts)

A true bill,



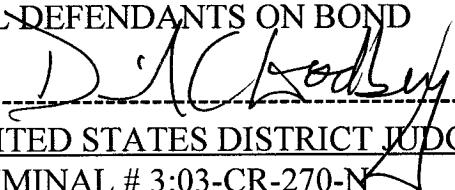
FOREMAN

DALLAS

Filed in open court this 20th day of July, A.D. 2004

Clerk

ALL DEFENDANTS ON BOND


UNITED STATES DISTRICT JUDGE
CRIMINAL # 3:03-CR-270-N