

State of Minnesota
County of Hennepin

District Court
4th Judicial District

Prosecutor File No. 19A13282
Court File No. 27-CR-21-16205

State of Minnesota,

Plaintiff,

vs.

MICHAEL JAMES HARVEY DOB: 09/13/1979

3534 Sterling Heights Drive E
River Falls, WI 54022

Defendant.

COMPLAINT

Summons

The Complainant submits this complaint to the Court and states that there is probable cause to believe Defendant committed the following offense(s):

COUNT I

Charge: Theft-By Swindle

Minnesota Statute: 609.52.2(a)(4), with reference to: 609.52.3(5), 609.52.3(1)

Maximum Sentence: 20 YEARS AND/OR \$100,000

Offense Level: Felony

Offense Date (on or about): 01/01/2017

Control #(ICR#): 18000497

Charge Description: That on or about January 1, 2017, through July 31, 2018, in Hennepin, Ramsey, Carlton, St. Louis, Scott, Wright, Chisago, Washington, Olmsted, Anoka, Wabasha, and Goodhue counties, Minnesota, Michael James Harvey obtained property or services from numerous victims by swindling them using artifice, trick, device or other means, and the property or services had an aggregate value in excess of \$35,000.

STATEMENT OF PROBABLE CAUSE

Your Complainant, Tracy Kaczrowski, is a Special Agent with the Commerce Fraud Bureau at the Minnesota Department of Commerce. In that capacity, Complainant investigated the facts and circumstances of this case, in conjunction with other Commerce Fraud Bureau agents and law enforcement agencies, by reviewing relevant records and interviewing witnesses. Complainant believes the following facts establish probable cause:

In and about March 2018, a number of citizens throughout Minnesota notified various law enforcement agencies that they had been defrauded by MICHAEL JAMES HARVEY (DOB 9/13/1979) (“Defendant” herein). The subsequent investigation revealed that Defendant had engaged in an ongoing swindle through his business, Able Energy Corp. (also known as WeKnowSolar.com), a private solar panel installation company. In short, Defendant’s company entered into contracts with citizens throughout Minnesota to complete solar panel installations on their homes or businesses, but Able Energy lacked the financial capacity to do the work it had already promised to do for preexisting customers, much less to take on additional work for new customers. Further, as of March 2018, Able Energy also lacked the necessary licensure to do the work it had promised to do. Nonetheless, under Defendant’s direction, Able Energy continued to enter into new contracts and to take in thousands of dollars from new and existing customers, who were often given the impression that their specific payment would be put towards the work on their specific property when in fact it was being used to fend off creditors and for other purposes, including Defendant’s personal purposes. As described in more detail below, Defendant engaged in this fraud spanning multiple years and victimized residents in numerous counties across Minnesota.

I. Defendant’s Operation of Able Energy

Defendant was the sole owner, CEO, and registered agent of Able Energy, which began operating in 2010. Able Energy marketed itself as a solution for cost-effective and clean energy through solar electric and solar thermal installation. While Able Energy employed numerous individuals, Defendant described his role at Able Energy as having his “hands on the proverbial steering wheel” and setting expectations for the company. He stated that he used his electrical knowledge to advise the installers, and in some instances, he would help with the solar panel installations. Defendant further stated that he largely handled technical issues and conducted online marketing. Defendant also reported that he managed the project managers from time to time, but Defendant added that he would become involved in situations if there were “issues” or “priority customers.” Defendant also said that he would have his “hands on new construction just to make sure it’s hitting certain phases of that process.” Records showed Defendant would often communicate with customers through Able Energy’s messaging system known as Basecamp. Further, bank records showed that Defendant was a signer on Able Energy’s business bank accounts and signed most of the checks that were withdrawn from its accounts. Defendant was aware of and responsible for Able Energy’s financial situation. He also kept information concerning Able Energy’s mounting financial troubles from associates who were trying to help him straighten out the situation, including an accountant whom Defendant asked for payroll and tax assistance in January 2018. The accountant told investigators she repeatedly asked Defendant for Able Energy’s bank records (or access to its accounts) so that she could complete her work, but never received them and eventually stopped asking.

Customers typically agreed to solar energy installation contracts with Able Energy while meeting with one of the company’s sales representatives. The contracts—almost invariably form contracts prepared by Able Energy—included information on the type of installation, total costs with tax credits and other incentives, warranties, and the schedule for installation. Most, if not all, of the contracts stated that projects would be “commenced based on current job queues, product and staff availability, and is and (sic) completed completely at the discretion of Able Energy.” Many also included a representation that a “typical installation

time frame” would range from 6 to 33 weeks and would take longer only in “rare instances.” According to the form contract, the customer would be placed in the “job queue” (the list of all the projects that Able Energy was under contract to complete, in order of planned completion) when Able Energy received the initial payment. The initial payment varied across contracts, but often amounted to a majority (60% or more) of the project cost. The larger payments were a result of a strategy that Able Energy employed in which customers were told that their projects would be placed toward the front of the job queue if they made larger up-front payments. Defendant instructed Able Energy sales representatives to encourage customers to make larger payments, which in turn left Defendant with greater cash up front to use to prop up his failing business.

According to employees at Able Energy, Defendant further instructed sales representatives to make specific statements to customers about various aspects of the customer’s contract or project. One employee described Defendant as being very direct and adamant that his employees tell customers certain things, such as project start dates that turned out not to be accurate. When the employee raised concerns with Defendant about Able Energy’s ability to complete projects, Defendant merely encouraged the employee to continue to solicit more sales for Able Energy. Another person involved in Able Energy’s operations at the end of 2017 and beginning of 2018 told investigators that Defendant badgered his staff to make false promises to customers regarding installations and project completion times.

Dozens of customers made payments to Defendant’s business pursuant to these contracts. In total, Defendant and Able Energy collected approximately \$1,014,000 in contract payments from at least 53 Minnesota victims between January 1, 2017 and July 31, 2018. Able Energy failed to complete any of these projects and did not even begin work on most of them.

II. Defendant’s and Able Energy’s Financial Records

Bank records from late 2016 showed that the typical flow of money in and out of Able Energy’s accounts usually started with a check from a new Able Energy contract which would be deposited into one of Able Energy’s accounts. Instead of using that money directly for solar installations (whether of the paying customer or of another customer who had already paid), it appeared that the money from customer contracts was only sporadically used for expenses related to solar installations.

Instead, a large portion of the money was typically spent on various expenses such as advertising, loan payments, and payroll. Other purchases appeared to be personal such as purchases at restaurants, retailers such as C and R Guns, Cabela’s and The Tile Shop, hotels, and grocery stores. Funds were sometimes transferred directly from business accounts to Defendant’s personal accounts. These transfers did not appear to take place on a regular schedule, but instead often occurred when Defendant’s personal account balances ran low. The combined effect of all these withdrawals often amounted to charges for non-sufficient funds as well as payroll checks that bounced and had to be reissued. When a new large customer check was deposited, the account balance would often return to positive numbers, but would quickly diminish as the cycle repeated.

By early 2017, Able Energy’s business bank accounts appeared to dip into negative numbers more often. By the time Able Energy, under Defendant’s direction, collected money from new customers around this period of time, it was inescapably clear that Able Energy could not keep the promises it was making to entice new customers to contract with Able Energy or to induce existing customers to make additional payments. Further, it could not provide refunds to customers who were demanding their money back since their projects had not commenced. Yet, of the limited funds that Able Energy had at its disposal, thousands of dollars continued to be spent at Minnesota Public Radio, Wisconsin Public Radio, Brilliant Impact Web Design, Solar Reviews, GetFiveStars, and Custom Ink, presumably for advertising and marketing work to continue to bring in new Able Energy customers. By the end of June 2018, all of Able Energy’s known

business accounts were empty, overdrawn, or closed.

III. The “Made in Minnesota” (MIM) program

Many of the victims were motivated to enter into contracts with Defendant’s company by financial incentives available from electric utilities or governments. One such incentive was the “Made in Minnesota” (MIM) program, which subsidized the installation of solar panels if some components of the solar panel system were made in Minnesota. The MIM program was established by legislation in 2013 and provided incentive payments (based upon actual solar energy produced) to electric utility customers selected through a lottery. By the middle of 2017, Able Energy had begun using a company called Itek to supply its MIM-eligible solar panels after a supplier it had relied on previously went out of business. Also by that time, Able Energy had several customers awaiting completion of their MIM projects that had been awarded in earlier years. Able Energy needed Itek solar panels in order to install these projects, but Itek required payment in advance before delivering the panels.

Able Energy had difficulty coming up with the money to pay Itek for the panels needed to complete the MIM projects for which it had contracted (and for which it had already received significant partial payments from customers). On June 13, 2017, Able Energy sent Itek a purchase order for nearly \$60,000 worth of MIM-eligible solar panels, but Able Energy did not pay for the order, and on July 25, 2017, Itek notified Able Energy that it was selling the panels to other customers. On July 26, 2017, Able Energy sent a smaller purchase order for about \$19,000 worth of MIM-eligible solar panels. It paid for and received delivery of this order.

In the fall of 2017, Itek’s production of MIM-eligible solar panels was delayed for approximately two months, meaning that it would not be able to fill orders until roughly December 2017 or January 2018. Both during and after the time period of the production delay, Able Energy and Defendant used the delay to justify continued inaction on MIM customers’ projects. However, Able Energy lacked the financial capacity to pay for the necessary panels and complete customers’ projects even when panels were available, and continued to blame Itek for the delay after there was no longer a shortage. On November 10, 2017, Itek notified Able Energy that it unexpectedly had 120 MIM-eligible panels (enough to complete approximately five or more residential solar projects) available due to a canceled order, and that Able Energy could have them if it paid for them. Able Energy representatives repeatedly told Itek they wanted the panels, but did not attempt to pay for them until January 31, 2018. On that date, Defendant signed and sent to Itek a check ostensibly intended to pay for half of the available panels, but the check bounced when Itek attempted to cash it. The same day, in a Basecamp message to a frustrated MIM customer who had already paid Able Energy about \$150,000 for solar installations she had been told would be completed in October 2017 but were not, Defendant denied that Able Energy was in breach of its installation contracts; threatened without legal basis to bill the customer for any time spent on the matter by Able Energy’s lawyer; and said, “your well aware of the delay being on itek, so your persistent meetings on where we are, wear thin on my patience, when I know between [two Able Energy representatives] you have been well informed.”

IV. The SolarSense Program

Another financial incentive for some Able Energy customers was the SolarSense rebate program offered by Minnesota Power, an electric utility operating in much of central and northeastern Minnesota. One of the conditions for a SolarSense customer to receive the rebate was to have the solar installation project completed within a specific time—typically six months from being approved for the program, although Minnesota Power could and did sometimes grant extensions. Able Energy was responsible for submitting SolarSense applications on behalf of its customers who were seeking the incentive. By the end of December 2017, Minnesota Power had determined that ten prospective SolarSense projects to be installed by Able Energy had not been timely completed and five more were in imminent danger of missing

their deadlines. Minnesota Power therefore elected to stop approving SolarSense applications for which Able Energy was listed as the installer pending satisfactory completion of those fifteen projects and notified Able Energy of that decision by letter dated December 22, 2017. Minnesota Power also notified Able Energy customers whose applications had already been approved that time was running out for their installations, that Minnesota Power would set a final extended project completion deadline of June 30, 2018, in order to receive the rebate, and that customers should alert Minnesota Power if they wanted to choose a new installer to complete their project.

Upon learning that Minnesota Power would no longer approve Able Energy's projects, instead of telling his employees to stop soliciting SolarSense projects and notifying customers whose pending SolarSense applications would be affected by the decision, Defendant allowed Able Energy to continue soliciting SolarSense projects he knew would not be approved. Defendant further directed his employees to submit new SolarSense applications to Minnesota Power under the name of a long-defunct, assetless, administratively dissolved company owned by Defendant, "Financed Energy LLC," in hopes of circumventing Minnesota Power's prohibition on applications that listed Able Energy as the project installer. Able Energy's customers had not signed contracts with Financed Energy LLC or agreed to do business with a defunct corporation. Minnesota Power rejected the Financed Energy LLC applications.

V. License Expiration and Revocations

On March 1, 2018, Able Energy's state electrical contractor license expired. Additionally, on March 5, 2018, the Minnesota Department of Labor and Industry issued a licensing order under which both Able Energy's electrical contractor license and Defendant's master electrician license were revoked. The order required Defendant and Able Energy to cease and desist from performing or offering to perform electrical work in the state of Minnesota. Despite this order, Defendant did not notify customers or stop receiving payments from customers who had already signed contracts, and he did not stop his sales personnel from soliciting more projects. Able collected approximately \$82,000 in contract payments from identified victims on or after March 5, 2018 through July 31, 2018. None of the victim individuals or businesses who made these payments had been notified that Able Energy's licenses had been revoked. Further, Defendant continued to fraudulently represent that he and Able Energy would complete the victims' projects even though he knew that he could not follow through on this promise.

VI. Summary

Defendant enticed customers to purchase solar installations from Able Energy, in part by encouraging them to seek incentives like the MIM program to offset the cost of installation. Defendant placed an emphasis on obtaining new customers and large down payments on these contracts even as he failed to complete solar installations for customers who already had contracts with Able Energy. Once the contracts were signed, Defendant repeatedly lied about the company's ability to complete the installations and made misrepresentations about when the installation work would begin.

There were many Able Energy customers in Minnesota who signed contracts and made payments even prior to January 1, 2017, who had projects that were either delayed beyond reasonable measure or never completed at all. For many customers, the deadlines for the MIM or other applicable incentive programs passed while they waited for Defendant to follow through on his promises. Defendant's ability to complete projects was further hindered by the revocation of his master electrician license, and the expiration and revocation of Able Energy's electrical contractor license, in March of 2018. Despite these licensing issues, Defendant continued to take on new business and represent that his company could complete solar installations when he knew that, legally and financially, he would be unable to complete the installations.

The victims of Defendant's fraud reside in numerous counties in the State of Minnesota including

Hennepin, Ramsey, Carlton, St. Louis, Scott, Wright, Chisago, Washington, Olmsted, Anoka, Wabasha and Goodhue counties. During the time period of this complaint, approximately 22 victims who made aggregate contract payments totaling approximately \$500,000 resided in, and/or had contracts for solar installation projects in, Hennepin County. The State maintains venue in Hennepin County pursuant to Minn. Stat. § 609.52, subd. 3(5), which provides that when two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the offenses was committed for all the offenses aggregated.

The State will seek an aggravated sentence on the basis that Defendant committed a major economic offense. The offense involved multiple victims, multiple incidents per victim, and an actual monetary loss substantially greater than the minimum loss specified in the statutes. The offense occurred over a lengthy period of time. Defendant also took advantage of his and his company's position as experienced players in the industry, and their perceived and actual position as gatekeepers to important information otherwise inaccessible to customers (such as information regarding industry conditions and Able Energy's own capacity to perform work), to commit the swindle.

Defendant is out of custody.

SIGNATURES AND APPROVALS

Complainant requests that Defendant, subject to bail or conditions of release, be:
(1) arrested or that other lawful steps be taken to obtain Defendant's appearance in court; or
(2) detained, if already in custody, pending further proceedings; and that said Defendant otherwise be dealt with according to law.

Complainant declares under penalty of perjury that everything stated in this document is true and correct. Minn. Stat. § 358.116; Minn. R. Crim. P. 2.01, subds. 1, 2.

Complainant

Tracy Kaczrowski
Special Agent
85 7th Place East
Suite 100
St. Paul, MN 55101
Badge: 105

Electronically Signed:
08/25/2021 04:38 PM
Ramsey County, MN

Being authorized to prosecute the offenses charged, I approve this complaint.

Prosecuting Attorney

Raina M. Urton
300 S 6th St
Minneapolis, MN 55487
(612) 348-5550

Electronically Signed:
08/25/2021 01:27 PM

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps be taken to obtain Defendant's appearance in court, or Defendant's detention, if already in custody, pending further proceedings. Defendant is therefore charged with the above-stated offense(s).

SUMMONS

THEREFORE YOU, THE DEFENDANT, ARE SUMMONED to appear as directed in the Notice of Hearing before the above-named court to answer this complaint.

IF YOU FAIL TO APPEAR in response to this SUMMONS, a WARRANT FOR YOUR ARREST shall be issued.

WARRANT

To the Sheriff of the above-named county; or other person authorized to execute this warrant: I order, in the name of the State of Minnesota, that the Defendant be apprehended and arrested without delay and brought promptly before the court (if in session), and if not, before a Judge or Judicial Officer of such court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon as such Judge or Judicial Officer is available to be dealt with according to law.

Execute in MN Only

Execute Nationwide

Execute in Border States

ORDER OF DETENTION

Since the Defendant is already in custody, I order, subject to bail or conditions of release, that the Defendant continue to be detained pending further proceedings.

Bail: \$35,000.00

Conditions of Release:

This complaint, duly subscribed and sworn to or signed under penalty of perjury, is issued by the undersigned Judicial Officer as of the following date: August 25, 2021.

Judicial Officer

Luis Bartolomei
District Court Judge

Electronically Signed: 08/25/2021 04:54 PM

Sworn testimony has been given before the Judicial Officer by the following witnesses:

**COUNTY OF HENNEPIN
STATE OF MINNESOTA**

State of Minnesota

Plaintiff

vs.

Michael James Harvey

Defendant

LAW ENFORCEMENT OFFICER RETURN OF SERVICE
*I hereby Certify and Return that I have served a copy of this
Summons upon the Defendant herein named.*

Signature of Authorized Service Agent:

DEFENDANT FACT SHEET

Name: Michael James Harvey
DOB: 09/13/1979
Address: 3534 Sterling Heights Drive E
River Falls, WI 54022

Alias Names/DOB:
SID:
Height:
Weight:
Eye Color:
Hair Color:
Gender: MALE
Race: White
Fingerprints Required per Statute: Yes
Fingerprint match to Criminal History Record: No
Driver's License #:
SILS Person ID #: 870959
SILS Tracking No. 3136097
Case Scheduling Information: Complex Crime Team case; please schedule on the serious felony calendar.
Alcohol Concentration:

STATUTE AND OFFENSE GRID

Cnt Nbr	Statute Type	Offense Date(s)	Statute Nbrs and Descriptions	Offense Level	MOC	GOC	Controlling Agencies	Case Numbers
1	Charge	1/1/2017	609.52.2(a)(4) Theft-By Swindle	Felony	U1061		MN062095Y	18000497
	Penalty	1/1/2017	609.52.3(1) Theft-Firearm or Property Value Over \$35,000	Felony	U1061		MN062095Y	18000497
	Modifier	1/1/2017	609.52.3(5) Theft-Aggregated within 6-months and in violation of subd. 2, clauses (1), (2), (3), (4), or (13)	No-Level	U1061		MN062095Y	18000497