

Justice # CW210357
Data # 0638896

IN THE COUNTY COURT OF DOUGLAS COUNTY, NEBRASKA

STATE OF NEBRASKA
Plaintiff,

vs.

GARY D COOPER,
Defendant.
D.O.B. 30 August 1957.
ADDRESS: 10809 N 276TH
VALLEY, NE 68064
DR. LIC.: G01374167 NE
AR# CW210357
RB# 20200025686
CMS# CW210357
MS

CR#

21-6126

**CRIMINAL COMPLAINT
(FELONY)**

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CRIM/TRAFF DIVISION

APR 15 2021

Clerk of Court
DOUGLAS COUNTY COURT
OMAHA, NEBRASKA

The State of Nebraska hereby complains to the Court that GARY D COOPER is alleged to have violated the following laws of the State of Nebraska:

COUNT 1: CRIMINAL CONSPIRACY CLASS IIA FELONY

On or about 5 June 2020 through 31 August 2020, in Douglas County, Nebraska, GARY COOPER did then and there, with intent to promote or facilitate the commission of a felony, specifically: THEFT OF SERVICES \$5,000 OR MORE, did then and there agree with one or more persons that they or one or more of them shall engage in or solicit the conduct or shall cause or solicit the result specified by the definition of the offense; and he or another person with whom he conspired commits an overt act in pursuance of the conspiracy, specifically: did PROFIT FROM ALTERED FEES AND WEIGHTS in violation of Neb. Rev. Stat. §28-202, a Class IIA Felony. 22932 28-202-2A

I, ERIC M. FABIAN, Deputy County Attorney, allege that this Criminal Complaint is true based upon my information and belief.



ERIC M. FABIAN, # 25752
Deputy County Attorney



1479763CRC01

Witnesses for the State:
MICHAEL P DECHELLIS #S408
NATHAN J KOVARIK #S376
TODD R CRUISE #S424
EMILY PENRY #S619
JOHN L MCFARLAND #S433
KENT HOLMES
DONALD GRAHAM
MICHAEL CHAN
LYNN PICKERING
RYLE PALMER
JOSE JAIME

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OMAHA, NEBRASKA

IN THE COUNTY OF DOUGLAS COUNTY, NEBRASKA
CRIMINAL BRANCH

THE STATE OF NEBRASKA,
Plaintiff,

vs.

Gary D. Cooper
DOB 8/30/1957, data #0638896
Defendant,

DCSO20200025686 / M17688

DOC. _____ NO. _____

AFFIDAVIT OF COMPLAINING WITNESS

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

Deputy M. DeChellis S408, being duly sworn on oath, deposes and states that your affiant is a resident of the State of Nebraska, and a Deputy Douglas County Sheriff.

Your Affiant is an investigator with the Douglas County Sheriff's Office and has been a sworn member of that office since January of 2007. Your affiant has participated in investigations of numerous crimes against property and crimes against persons in his capacity as a Sheriff's Deputy and has written and executed several criminal search and arrest warrants. Your affiant has received training at the Nebraska Law Enforcement Training Center, as well as advanced training in investigative techniques at the Midwest Counterdrug Training Center. Your affiant is currently assigned to the Douglas County Sheriff's Office Criminal Investigation Division, assigned to investigate criminal offenses that occur within Douglas County, Nebraska.

On 12 November, 2020 Sgt. N. Kovarik (S376) of the Douglas County Sheriff's Office Criminal Investigations Bureau received by phone a theft report from Douglas County Environmental Services supervisor Kent Holmes. Holmes stated that employees at the landfill scale house (Pheasant Point Landfill, 13505 N 216th St, Douglas County, Bennington, NE 68007) were failing to properly weigh all vehicles entering and leaving correctly. Employees were manually entering tare weights in such a manner that the amount owed by the patrons, an amount determined by the weight of their dumped materials, was substantially lowered from the amount that was actually owed.

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Holmes had become aware of the matter when Waste Management, the company responsible for most aspects of the landfill management sent three scale house employees home for suspicion of theft on or about 15 October, 2020. These individuals were Douglas County employees James Sudyka, Anahi Lara, and Suzanne Swanson. Three other employees, Mark Helmberger, Lynn Pickering, and supervisor Mark Huntley remained on the job.

Holmes described standard operations and revenue processes as follows: Vehicles carrying loads to be dumped park on the inbound lane scales and their weights are recorded. The vehicles then travel into the landfill and dump their contents. They exit through the outbound lanes and stop on a scale to have their empty, or "tare" weight recorded. The fees due are calculated based upon the difference between these two weights and are calculated on a per ton basis. Revenue from the landfill is distributed on a percentage basis to Waste Management, the Douglas County Treasurer, the State of Nebraska, and landowner Donald Graham.

Holmes advised that employees were manually adjusting the "tare" weights of vehicles upwards causing the resulting weight calculations to be incorrect and thus allowing the operators to pay substantially less than they should have. Vehicles involving cash transactions were also being billed at the inbound window of the landfill, an obvious violation of the rules because no accurate "tare" weight could be recorded before the vehicles entered and dumped their loads.

Douglas County Sheriff's Office investigator Deputy Cruise (S#424) was assigned the theft report for follow up investigation and he received reports, data, and video pertaining to a Waste Management internal investigation and analysis of landfill operations.

Waste Management Analyst Michael CHAN provided a spreadsheet of suspicious transactions and video from 5Jun20 to 31Aug20 at the scale house. This included cash customers who weighed in and out too quickly. This indicated the customer was not dumping and then weighing out and getting a true tare (empty weight) for an accurate assessment of a dumping fee. Numerous customers had their tare weights manually adjusted at the inbound window to show final weights below one ton. This would indicate that the scale house employee had manipulated the scale records in a way that lowered the dump fee below the minimum fee of \$26.38.

CHAN also provided video of these incidents. Investigation and observation by Dep. Cruise and Investigative Services Specialist Penry (S#619) indicated that there were several haulers that obtained financial benefit from SUDYKA, HELMBERGER, SWASON, PICKERING, and LARA. During the period that was evaluated these subjects lowered trash hauling company Clean Up Containers' dump fees 336 times by generating a manual tare weight at the inbound window. The weight was always lowered below the minimum dump fee of 1 ton. The Clean Up Container truck would then dump the trash and leave without weighing out. This type of illegitimate transaction was completed by SUDYKA, 126 times, SWANSON 60 times, PICKERING 52 times, HELMBERGER 51 times and LARA 46 times. HOLM and PALMER, ARLE (Waste)

Management on-site representative) advised there was no legitimate reason to complete the transaction on the inbound scale by manually making a tare weight. Staff would clearly know this process was wrong. CHAN estimates total loss to Waste Management for the last 3 years as \$349,553.99.

After the pattern of weight alteration was discovered Clean Up Containers was required to weigh out legitimately. Using the legitimate tare weights for the vehicles and the gross weights from the period evaluated, CHAN and Dep. Cruise determined the loss from Douglas County, Waste Management, State of Nebraska and Donald GRAHAM during the period being evaluated was \$8,847. This loss was realized as profit for Gary & Cathlene Cooper, the owners of Clean Up Containers. Tare weights were altered to lower fees by Sudyka 126 times, Pickering 52 times, Helmberger 51 times, Swanson 60 times, and Lara 46 times.

On 12Feb21 Gary Cooper was interviewed by Douglas County Sheriff's Office Criminal Investigations Bureau Sgt. McFarland (S433). In this interview Cooper stated he knew he was receiving a discount for 1 to 2 years from all the staff at the scale house. Cooper advised he did not ask for this discount, but knew it was happening. Cooper estimated his dump weights were lowered 1 ton each time. By using the number of times Cooper's weight was lowered and \$26.38 per ton dump fee this works out to be \$8,863.68 of financial benefit given to COOPER by the subjects in the scale house during the period evaluated. This works out to an estimated loss to the victims of \$38,113.82 per year from this hauler.

On 16Feb21 Sgt. McFarland interviewed Lynn Pickering. Pickering advised she was aware of James Sudyka and other, now retired employees taking money from the scale house illicitly since 1995. This was accomplished by creating fake tickets and keeping the money paid. Another method was deleting cash transactions from the computer and keeping the money. Pickering advised they would keep all the money in the register until the end of the day when the money would be split between the legitimate, reported cash and the unreported cash that was then taken and divided amongst the involved employees.

Pickering observed Huntley making deals with roofers to give them a discount and to obtain money for the group. Huntley (Supervisor) directed Pickering to give Heartland Dumpster, AMI Containers, Clean Up Containers, Roadrunner Waste, G&J Hauling, and Roll Enterprises discounts. Pickering advised the only benefit for the staff she observed was gifts from these haulers in the form of \$25 gift cards, or hams for scale house employees.

Pickering described a suspected cash theft between Lara and Huntley that she witnessed in 2019. Lara made it known amongst her coworkers that she was in need of money for a car. Huntley took the scale house cash reserve into the back room and left it there. Lara had remained at the scale house after the end of her shift. Lara then walked into the back room and came back out with a roll of cash in her hand. Investigation by Dep. Cruise revealed that Lara completed a \$7,750 cash purchase of a 2015 Ford Fusion on 15Jun2019 from Auto Solutions at 4419 S 140 St, Omaha, Nebraska.

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Pickering advised that Hector Flores Roofing was also regularly getting discounts on their dump fees at the landfill. Deputy Cruise interviewed Hector Flores on the phone and Flores claimed to have only visited the landfill one time. An audit of video and records by ISS Penry of transactions involving Hector Flores Roofing deemed "suspicious" by Waste Management showed that Flores had unloaded at the dump at least thirty two times between 5Jun20 and 31Aug20. In these transactions Sudyka had manually lowered Flores' weight and fees thirty times. Lara and Helmberger each lowered the weight and fees once.

24Feb21 Deputy Cruise interviewed James Sudyka. In the beginning of the interview Sudyka only described the correct procedures for weighing trucks in and out. Later in the interview he admitted to letting certain haulers dump for free. Sudyka also admitted to entering a manual tare weight and completing transactions at the inbound window. When asked why Sudyka raised the tare weights (thus lowering the fees) for Clean Up Containers, Sudyka stated he had to do it that way to make the line move fast enough. Sudyka stated he let other haulers dump for free to include G&J Hauling. Sudyka advised, "he's my guy" was the signal that a scale house employee would say and the other employees would know this was their person that would get to dump for free. Sudyka advised there were customers he called \$20 ones. This meant people they give a discount to by changing the weights to get the fee down below the minimum fee. Sudyka advised each Scalehouse employee had their customers they gave a discount to. Staff would lower the fee to \$20 and that was what the customer would pay. Sudyka admitted this was substantially less than the amount that was actually owed. Sudyka denied stealing any cash from the scale house, but later admitted that he stole \$20 a week from transactions with customers.

On 1Mar21 Dep. Cruise interviewed Palmer, Ryle the Director of Pheasant Point for Waste Management. Palmer advised he triggered the internal investigation with Waste Management and Kent Holm when he had heard repeated complaints of alleged theft at the scale house. Palmer investigated and noted that there was a significant cash flow drop from the scale house in 2020. On 13Oct2020 Palmer directed one of haulers that were paying a dump fee with manipulated tare weight to weigh out correctly. Palmer watched Sudyka and Swanson on video react inside the Scalehouse. Palmer advised that they looked to be in a panic. Instead of weighing the vehicle out correctly Sudyka and Swanson entered an altered lower gross weight. This made the first transaction look like the correct fee.

On 19Mar21 Dep. Cruise interviewed scale house employee Mark Helmberger. Helmberger advised he had worked at the scale house since 2007 and discounts had been given to some individuals throughout his term of employment. Helmberger advised that on a daily basis James Sudyka would take a bag of the scale houses' cash to a back room near the close of business. Sudyka would frequently leave amounts of cash between \$17 and \$100 lying out in that room and would tell Helmberger about it. Helmberger would then go into the back room and take that money which he described as a "tip". Your affiant has worked for Douglas County government for more than thirteen years and his duties have brought him into contact with representatives of dozens of different Douglas County agencies. Your affiant is not aware of any

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county government position in which it is customary, acceptable, or legal to accept cash "tips" as a reward for performing governmental duties.

Helmberger acknowledged that Hector Flores Roofing was a frequent recipient of discounts at the landfill. He also acknowledged that in the last year he had contracted Hector Flores to replace his home's roof pursuant to an insurance claim. Helmberger paid Flores \$2,126.82 less than his insurance had paid him for the repairs.

Helmberger advised that employees of the scale house gave discounts to Clean Up Containers and Yellow Box by using a sheet of inflated tare weights prepared by Sudyka. Sudyka would periodically update this sheet with false numbers for Clean Up Containers and Yellow Box's trucks. Scale house employees continued to use the sheets of false tare weights with the knowledge of supervisor Huntley even after Holm became aware of the practice and told the employees to stop.

Your affiant became involved in the case and contacted G&J Hauling owner Jose Jaime. After consulting with an attorney Jaime agreed to meet with your affiant for an interview. Jaime acknowledged receiving frequent and substantial discounts at the landfill. Jaime stated that he did not know any of the employees personally but he physically described James Sudyka and Anahi Lara as the persons who gave him the discounts. Jaime did not know why he received the discounts but stated that in summer 2020 the male with long hair (James Sudyka) started asking him for cash at the inbound window and provided receipts at that window for amounts less than the cash amount paid. Jaime later clarified through his attorney that he always paid fifty dollars in these inbound window transactions. He also provided your affiant with receipts showing his visits to the dump from 1Jun20 to 14Oct20.

Your affiant analyzed these receipts and found that 46 of them had weight values from the scales that had not been altered. 105 receipts showed alterations by James Sudyka and 7 showed alterations by Anahi Lara. In the unaltered receipts the average weight was 4.57 tons and the average amount paid was \$125.29. In Sudyka's altered receipts the average weight was .41 tons and the average amount paid was \$20.85. In Lara's altered receipts the average weight was 1.24 tons and the average amount paid was \$35.06.

Using averages of weights and payments, your affiant calculates that Sudyka's G&J Hauling weight alterations likely cost the landfill \$10,966.20 in revenue during the period covered by the receipts. In that same period Sudyka received \$3,060.84 in cash (based on \$30.61 per transaction) that he did not enter into the landfill's accounting and presumably kept or gave to other employees as "tips".

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Based on the above information your affiant respectfully requests a felony arrest warrant be issued for Gary D. Cooper, W/M, DOB 8/30/1957, data #06388, address 10809 N 276th St, Valley, Douglas County, Nebraska 68064, 6'0", 180 lbs, blue eyes and blond hair. Your affiant requests that Cooper be charged with: one count of Conspiracy to Commit a class IIA Felony Ne S.S. 28-202.

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This affiant further states that he has reasonable cause to believe and does believe the crime was committed as charged in said complaint filed, that he believes the said defendant committed the said crime as indicated by the facts set out herein; and that the prosecution has sufficient evidence to warrant the conviction of the defendant for the crime charged.

DATED this 15th day of April, 2021.

5408

SUBSCRIBED AND SWORN TO before me this 15th day of APRIL, 2021

[Signature]
Deputy ~~Judge~~ of the County Court of Douglas County, Nebraska
Clerk

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