

FILED
08-08-2019
Clerk of Circuit Court
Pierce County, WI
2019CF000164

STATE OF WISCONSIN	CIRCUIT COURT	PIERCE COUNTY
STATE OF WISCONSIN Plaintiff,	DA Case No.: 2019PI000379 Assigned DA/ADA: Sean E. Froelich Agency Case No.:	
vs.	Court Case No.: ATN:	
DANIEL W. BRIESE 155 Bjerstedt Court River Falls, WI 54022 DOB: 12/22/1968 Sex/Race: M/W Eye Color: Green Hair Color: Blonde Height: 6 ft 0 in Weight: 210 lbs Defendant.	CRIMINAL COMPLAINT	
		<i>For Official Use</i>

The undersigned being first duly sworn on oath states that,

Count 1: FRAUD/RENDERING INCOME TAX RETURN

The above-named defendant on or about Friday, March 14, 2014, Pierce County, Wisconsin, did render a false or fraudulent income tax return with intent to defeat or evade any assessment required by this chapter, or to obtain a refund or credit with fraudulent intent, to wit: failed to report \$105,267.70 of income on his 2013 income tax return, contrary to sec. 71.83(2)(b)1, 939.50(3)(h) Wis. Stats., a Class H Felony, and upon conviction may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than six (6) years, or both.

The cost of prosecution may be assessed.

Count 2: FRAUD/RENDERING INCOME TAX RETURN

The above-named defendant on or about Friday, April 10, 2015, Pierce County, Wisconsin, did render a false or fraudulent income tax return with intent to defeat or evade any assessment required by this chapter, or to obtain a refund or credit with fraudulent intent, to wit: failed to report \$118,901.49 of income on his 2014 income tax return, contrary to sec. 71.83(2)(b)1, 939.50(3)(h) Wis. Stats., a Class H Felony, and upon conviction may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than six (6) years, or both.

The cost of prosecution may be assessed.

Count 3: FRAUD/RENDERING INCOME TAX RETURN

The above-named defendant on or about Thursday, February 4, 2016, Pierce County, Wisconsin, did render a false or fraudulent income tax return with intent to defeat or evade any assessment required by this chapter, or to obtain a refund or credit with fraudulent intent, to wit: failed to report \$124,774.46 of income on his 2015 income tax return, contrary to sec. 71.83(2)(b)1, 939.50(3)(h) Wis. Stats., a Class H Felony, and upon conviction may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than six (6) years, or both.

The cost of prosecution may be assessed.

Count 4: FRAUD/RENDERING INCOME TAX RETURN

The above-named defendant on or about Tuesday, April 18, 2017, Pierce County, Wisconsin, did render a false or fraudulent income tax return with intent to defeat or evade any assessment required by this chapter, or to obtain a refund or credit with fraudulent intent, to wit: failed to report \$33,171.34 of income on his 2016 income tax return, contrary to sec. 71.83(2)(b)1, 939.50(3)(h) Wis. Stats., a Class H Felony, and upon conviction may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than six (6) years, or both.

The cost of prosecution may be assessed.

PROBABLE CAUSE:

Based on the foregoing, the complainant believes this complaint to be true and correct.

On June 23rd, 2016, Pierce County Sheriff Investigator Collin Gilles met with Richard Finks, a corporate investigator for Trinity Industries, to discuss a possible embezzlement involving one of Trinity's employees.

In 2014, Trinity Industries bought Meyers, also known as Thomas & Betts in Hager City, Pierce County, Wisconsin. Since acquiring Thomas & Betts, Trinity began looking into the shipping processes and logistics of Thomas & Betts. Daniel Briese, according to Fink's reports, was the employee in charge of the shipping aspects of Thomas & Betts. When Trinity began asking Briese about the shipping practices of the business, Briese began acting oddly and later quit. Trinity supervisors became suspicious and began investigating past practices. The internal investigation found that Briese was having a shipping company, Red Eye Express, charge Thomas & Betts a higher rate and that Briese was receiving kickbacks from Debbi Johnson, the owner of Red Eye Express.

On August 12th, 2016, Investigator Gilles went to Ms. Johnson's home for an interview. While on his way to Ms. Johnson's home, Investigator Gilles called Ms. Johnson to see if she was home. Ms. Johnson said she was home, but was unsure if she wanted to discuss the Trinity case. Investigator Gilles then applied for and was granted a search warrant for Ms. Johnson's home at the Washburn County Courthouse. The warrant was signed by Judge Eugene Harrington. After obtaining the warrant, Investigators Gilles, Koch and two Washburn County Sheriff's deputies arrived at Ms. Johnson's home. Shortly after the deputies arrived, Ms. Johnson arrived back home from the post office. Deputies presented Ms. Johnson with the warrant and she took deputies into her office and presented them with the requested documents.

Ms. Johnson stated to the deputies that she had only met Briese in person a couple of times. She also stated that she owned Red Eye Express and was doing business with Briese and the Trinity Plant in Hager City. She further stated that she kind of knew that what she was doing was wrong but she believed the level service her company provided justified the higher price she was charging. When asked if she had records of the money paid to Briese, Ms. Johnson printed a spreadsheet for 2014 and 2015 showing how much Briese received for giving business to Red Eye Express. In 2014, the amount given to Briese was \$55,632.30 and in 2015 the total was \$108,314.10. Ms. Johnson stated that she also gave Briese a credit card that she listed as a business card for Red Eye Express. Briese would use the credit card and Red Eye Express would pay the bill. Ms. Johnson said that this arrangement was not her idea, and that Briese had even asked her to register her business as a disadvantaged business entity as a way for him to funnel more business to Red Eye Express. Ms. Johnson told deputies that she recorded every penny that she gave Briese and filed it on her taxes as well. She provided deputies with a copy of her 2013 tax statement that listed the brokerage fees paid to Briese. According to the records provided by Ms. Johnson to Investigator Gilles, Daniel Briese received \$218,462.27 from Red Eye Express between 2013 and 2016.

On August 16th, 2016, Investigator Gilles went to Briese's home to ask Briese about the Trinity case. Investigator Gilles knocked on the door of the residence and Briese's wife, Becky Briese, answered the door. Becky Briese told Investigator Gilles that Briese was at work and asked if she should call Briese to have him come home. At Inv. Gilles request, Becky called

Briese and handed the phone to Inv. Gilles. Briese arranged meet with Inv. Gilles at the Red Barn, a gas station and convenience store, parking lot. Inv. Gilles then asked Becky if she knew about everything that was going on. Becky began crying. Becky stated that Briese was really sorry and knew he screwed up.

Investigator Gilles met with Briese at the Red Barn and the two sat outside at table for the entirety of the interview. Briese told Inv. Gilles that he wanted to be forthcoming. Briese said that he was originally looking for an accounting job, but ended up in the shipping department. This caused him a lot of stress and pressure as he had to meet certain quarterly goals due to stocks and bonuses. Briese also stated that he had no training and several bad bosses. Briese said that when he started making the bad decisions he felt like he was earning them. When asked how the money came to him, Briese said it came through the credit card. When asked how he spent the money, Briese said that he was just buying things around the house, some concrete for his property and shed, and a snowmobile from the dealer. Inv. Gilles mentioned that he was told that Briese was getting 7%, Briese mentioned that the actual amount was closer to 3% due to taxes. Inv. Gilles asked Briese why it happened and Briese said that he thought it was because he was angry at the company. Briese was frustrated by the amount of money being wasted by management and the company. During the conversation, Briese mentioned equity theory. The theory is that people who feel unfairly treated at work cause problems in the workplace such as stealing, taking sick days, sabotage, and generally causing problems. Briese became familiar with the equity theory during a class he took as part of his masters of accounting program. Briese said that he actually took the class to justify what he was doing. Briese also told Inv. Gilles that he takes full responsibility for what he did wrong. However, Briese was not specific about his wrongdoing in order to protect himself.

Trinity Corporate Investigator Finks emailed Investigator Gilles a list of drivers that worked for or previously worked for Red Eye Express who may have information regarding the kickback scheme and the involvement of Red Eye Express's co-owner Bruce Williams. Investigator Gilles interviewed the drivers by phone on August 24th, 2016.

Investigator Gilles contacted Brent Stern a former driver for Red Eye Express. Mr. Stern informed Inv. Gilles that after he quit he spoke with Ms. Johnson. Mr. Stern asked Ms.

Johnson if they actually got the contracted rate for each load. According to Mr. Stern, Ms. Johnson became upset and told him that they make a lot of money and to not complain about it. Mr. Stern stated that he had heard about a lot of gifts given to Briese, including a truck, boat, snowmobile, and a Cabela's gift card. Mr. Stern said that other drivers would have more direct knowledge of the kickback scheme, but that Bruce Williams, Red Eye Express's co-owner, had admitted that there had been kickbacks since the beginning.

Investigator Gilles contacted Chris Williams to discuss his knowledge of the Trinity situation. Chris Williams said that he heard that Briese was charging transport companies excessive rates on the loads they hauled and then received a percentage of the extra money from the company. Chris Williams recalled a phone conversation he had with Red Eye Express's co-owner Bruce Williams where Bruce Williams admitted that Briese had been raising load rates by 6% or 7% and that they had been splitting the difference. During this phone conversation with Chris Williams, Bruce Williams also admitted that this arrangement had been going on for over 5 years. Chris also stated that other companies had similar arrangements with other shipping companies. Chris stated that Martell Trucking bought one of Briese old homes for \$100,000 over market values, O'Neil 5 Star bought Briese a pickup truck and a hunting trailer full of goods, and that Red Eye Express had given Briese a boat.

On August 31, 2016, Inv. Gilles contacted Bruce Williams and Mr. Williams agreed to a meeting at Mr. Williams's new shop that was currently being built. Mr. Williams told Inv. Gilles that he and Ms. Johnson had met a long time ago and started dating. They then started Red Eye Express and began working with Briese and Thomas & Betts. Mr. Williams stated that Briese approached him to discuss a deal. The deal was that Briese would get 3% then 7% with Briese eventually asking for 10%. Mr. Williams recalled times when he told Briese that he believed the amount Briese was asking for was too high and that after these conversations Mr. Williams would see a reduction in the amount of business coming from Thomas & Betts. Mr. Williams told Investigator Gilles that eventually Red Eye Express issued Briese a credit card so the business would no longer have to give Briese lump sums of cash.

Daniel Briese pleaded guilty to theft, an ordinance, under Pierce County Code 176-6 in Pierce County Case Number 2017CF287. The Theft-Business Setting >\$10,000 felony count was dismissed on the prosecutor's motion.

This case was referred to the Wisconsin Department of Revenue as it was suspected that Daniel Briese did not report the income from his kickback scheme on his income tax returns. Special Agent Nick Weidman from the Wisconsin Department of Revenue was assigned to investigate Briese's possible income tax evasion.

On December 14, 2017, S/A Weidman met with Inv. Gilles to discuss the Briese case. Inv. Gilles assessed S/A Weidman of his findings.

On March 16, 2018, S/A Weidman visited Martell Trucking Company to discuss allegations of kickbacks paid to Briese. Paul Frandsen Jr, son of the owner of Martell Trucking Company, told S/A Weidman that his father was out of town, but that he would try to answer any questions. Frandsen told S/A Weidman that they wanted to do business with Trinity Meyers, but would never get as many loads as O'Neil Five Star or Red Eye Express. When Martell did get loads from Trinity, Martell would get paid by Red Eye Express. S/A Weidman asked Frandsen if Briese ever reached out to Martell to negotiate any sort of deal. Frandsen said no and that he never met Briese in person except one time in a Perkins. S/A Weidman asked about the house that Martell purchased from Briese. Frandsen said he was aware of it, that they currently rent out the property, and that they have documents regarding the transaction. Frandsen recommended that S/A Weidman speak with John O'Neil from O'Neil Five Star as he would have more information.

On March 16, 2018, S/A Weidman made contact with John and Mary O'Neil as well as their son and manager of O'Neil Five Star. S/A Weidman asked why O'Neil Five Star issued 1099s (a tax form given to independent contractors to report income) from 2011 through 2014 to Becky Briese, the wife of Daniel Briese. Mary O'Neil said that Becky worked part-time on nights and weekends doing mileage reports, taxes, and some accounting. S/A Weidman asked if Becky gave invoices for her services. Mary O'Neil said that Becky did not give invoices, and John O'Neil stated that Becky was paid a percentage of their sales. S/A Weidman told the O'Neils that the amounts claimed on the 1099 seemed like a lot and that there were times where Becky was getting paid more in a year than what O'Neil Five Star made in profits. S/A Weidman asked how the O'Neils how they found Becky to work for them

and if they knew if she had other employment. The O'Neils said that they heard from Becky's husband that she was looking for work and that Becky was a school teacher.

On February 22, 2019, S/A Weidman attempted to contact O'Neil Five Star to inquire further about the 1099s issued to Becky Briese, but the O'Neils were on vacation at the time. He then sent a subpoena requesting information regarding payment to Becky Briese as well as previous work done for Trinity Meyers and Thomas & Betts.

On March 7, 2019 S/A Weidman received a phone call from Attorney Michael Cohen who had been retained by John and Mary O'Neil. Atty. Cohen stated that the O'Neils would be cooperative and provide any information that S/A Weidman needs. On March 26, 2019, S/A Weidman sent the following inquiries to Atty. Cohen for the O'Neils to answer:

- Did Becky Briese perform any services or complete any projects for O'Neil Five Star LLC in 2013 and 2014? If so, please provide dates and specific examples.
- If there was not a contract between O'Neil Five Star LLC and Becky Briese and Becky Briese did not issue an invoice for her work, how did you know how much to pay for her services?
- Did Becky Briese legitimately work as an independent contractor providing consultation services to O'Neil Five Star LLC in 2013 and 2014 or was the primary reason for paying Becky Briese \$398,565 to pay Daniel Briese indirectly in exchange for increased sales to Thomas & Betts or Trinity Meyers?
- Who decided that the money referred to as "commissions" or "contract labor" in the records provided in the amounts of \$398,565 paid to Becky Briese instead of Daniel Briese? What is the reason for this decision?
- Why did you issue a 1099 to Becky Briese?
- Would John and/or Mary O'Neil be willing to sign an affidavit swearing that their answers to these questions are true, accurate, and complete to the best of their knowledge and belief?

John and Mary O'Neil provided the following responses to Atty. Cohen, who sent them via email to S/A Weidman on April 19, 2019:

- Becky Briese did not work for or perform services for O'Neil 5 Star. She was paid as the O'Neil's were directed to pay by her husband [Daniel Briese]. They 1099'd her to make sure that all of their payments were recorded appropriately as required.
- The amount they were told to pay was calculated by Mr. Briese. It was determined by him. It was a percentage of the gross amount billed to Thomas & Betts/Trinity Meyers.
- It was Mr. Briese the manner by which the payments were to be denoted.
- Becky Briese did not work as an independent contractor. My clients are now fully aware that the reason that monies were paid to Becky was to get money to Dan [Briese]. My clients needed to keep the business with Mr. Briese as they were a young company at the time. They did as they were told so that the account was not lost.

On March 14, 2018, S/A Weidman sent a subpoena to Red Eye Express LLC requesting financial information relating to payments made to Briese. On April 13, 2018, S/A Weidman received a correspondence from Attorney Timothy O'Brien on behalf of Deborah Johnson. Included with the correspondence were schedules used by Red Eye Express to calculate the amount paid to Daniel Briese for each year from 2013 to 2016, as well as copies of credit card statements for business credit cards issued to Briese and Becky Briese from Red Eye Express.

On February 22, 2019, Special Agents Weidman and William Gray met with Briese at his work for an interview. After introducing themselves as from the Wisconsin Department of Revenue, Briese agreed to discuss his tax returns. Briese led the agents to a back office at his work for the interview. S/A Weidman asked Briese about the Schedule Cs (a tax document used by sole proprietors of a business to document income and expenses) that were filed with his 1040 (individual tax return) in 2012 to 2014. Briese said he did not really remember the Schedule C and S/A Weidman provided Briese with a consolidated Schedule C using information from the actual return. Briese claimed he remembered the Schedule C now and asked if he should have his lawyer present. S/A Weidman said Briese could have his attorney present if he wanted. S/A Gray told Briese that he was not in custody and that S/A Weidman is not a sworn law enforcement officer. Briese then said he would entertain questions but might not answer all the questions. When asked about his educational background, Briese said "Masters." When asked what his master's degree was in, Briese said "Accounting." When asked who prepares his tax returns, Briese said "Me." S/A Weidman asked Briese if he had

filed his own tax returns since 2012. Briese said that he had. S/A Weidman then asked if the Schedule C was a real, legitimate business or if it was just a way to report the income from O’Neil. Briese said it did not matter because he reported the income. Briese then terminated the interview and directed the agents to contact his attorney.

Special Agent Weidman examined the 1040 Schedule C documents for 2013 and 2014 and Briese did report the income on the Schedule C. However, on the Schedule C form Briese also listed \$52,442 in expenses in 2013 and \$50,818 in expenses in 2014. See below table for breakdown of claimed expenses:

Claimed Expense	2013	2014
Advertising	\$3,976	\$5,134
Taxes and Licenses	\$95	\$0
Car and Truck Expense	\$10,298	\$5,588
Commissions and Fees	\$0	\$1,100
Contract Labor	\$0	\$1,359
Interest Payments	\$0	\$723
Legal and Professional Services	\$1,200	\$2,350
Office Expense	\$0	\$2,310
Vehicles, Machinery, and Equipment Leases	\$17,300	\$9,579
Supplies	\$5,523	\$5,126
Travel	\$495	\$3,635
Deductible Meals and Entertainment	\$10,887	\$11,645
Utilities	\$2,178	\$1,969
Other Expenses	\$490	\$300

By claiming these seemingly normal expenses, Briese underreported the amount of taxable income received by Becky Briese from O’Neil 5 Star. However, Becky Briese never

incurred these expenses because she never did contract work for O'Neil 5 Star as a sole proprietor.

Furthermore, when Special Agent Weidman examined the gross deposits made into the Briese's bank accounts and when he compared it to the amount of reported income as well as the documents from Red Eye Express detailing the payments to Briese, S/A Weidman found that Briese underreported his income on his tax returns from 2013 to 2016. The analysis of Mr. Briese's financial records reveals that in 2013 the total amount of income not reported was \$45,393.70, in 2014 the amount was \$60,664.49, in 2015 the amount was \$124,774.46, and in 2016 the amount of unreported income was \$33,171.34.

For the years 2013, 2014, 2015, and 2016, Daniel Briese underreported his taxable income by excluding income and claiming excessive expenses in the amount of approximately \$382,115 and as a result evaded approximately \$24,518 in Wisconsin Income taxes. Respectively for the year 2013, \$6,828.12 was evaded in Wisconsin Income taxes; in the year 2014, \$7,632.42 was evaded in Wisconsin Income taxes; in the year 2015, \$7,894.42 was evaded in Wisconsin Income taxes, and in the year 2016, \$2,163.25 was evaded in Wisconsin Income taxes.

Your complainant bases his/her knowledge of this complaint on:

The official law enforcement agency reports of the Pierce County Sheriff's Office prepared by Investigator Collin Gilles, whose reports were prepared in the normal course of law enforcement duties;

The official reports of the Wisconsin Department of Revenue, prepared by Special Agent Weidman, whose reports were prepared in the normal course of law enforcement duties;

Statements of citizens who have personal knowledge of the facts they relate;

Statements of the defendant, where were made contrary to his penal and pecuniary interest;

The official records of: The Circuit Court of Pierce County, The Wisconsin Department of Revenue, and The Wisconsin Circuit Court Automated Program, which records are maintained in the normal course of business duties.

Based upon the foregoing, the complainant believes this complaint to be true and correct.

Subscribed and sworn to before me on 08/08/19

Electronically Signed By:

Sean E. Froelich

District Attorney

State Bar #: 1084551

Electronically Signed By:

Inv. Collin Gilles

Complainant