

FILED
05-29-2020
Circuit Court
Columbia County, WI
2020CF000243

STATE OF WISCONSIN CIRCUIT COURT COLUMBIA COUNTY

STATE OF WISCONSIN
Plaintiff,

DA Case No.: 2019CO003060
Agency Case No.: 0-168-085-760

Court Case: Felony

vs.

Timothy C Ashley
W3904 CTH P
Cambria, WI 53923
DOB: 09/23/1960

Defendant.

CRIMINAL COMPLAINT

The undersigned, being sworn, states:

Count 1: FILING FALSE INCOME TAX RETURN: In Spring, 2017, in Columbia County, Wisconsin, the defendant did render a false or fraudulent 2016 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, contrary to sec. 71.83(2)(b)1 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.

Count 2: FILING FALSE INCOME TAX RETURN: In Spring, 2018, in Columbia County, Wisconsin, the defendant did render a false or fraudulent 2017 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, contrary to sec. 71.83(2)(b)1 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.

Count 3: FILING FALSE INCOME TAX RETURN: In Spring, 2019, in Columbia County, Wisconsin, the defendant did render a false or fraudulent 2018 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, contrary to sec. 71.83(2)(b)1 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.

Count 4: FILING FRAUDULENT SALES TAX RETURN: On or about June 30, 2017, in Columbia County, Wisconsin, the defendant, as a person required to render a sales tax report or return under subchapter III of Chapter 77, Wis. Stats., did make a false or fraudulent report or return for May, 2017, with intent to defeat or evade the sales tax imposed by the subchapter, contrary to sec. 77.60(7), Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than \$500, or imprisoned not more than 30 days, or both.

Count 5: FILING FRAUDULENT SALES TAX RETURN: On or about July 31, 2017, in Columbia County, Wisconsin, the defendant, as a person required to render a sales tax report or return under subchapter III of Chapter 77, Wis. Stats., did make a false or fraudulent report or return for June, 2017, with intent to defeat or evade the sales tax imposed by the subchapter, contrary to sec. 77.60(7), Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than \$500, or imprisoned not more than 30 days, or both.

Count 6: On or about September 30, 2017, in Columbia County, Wisconsin, the defendant, as a person required to render a sales tax report or return under subchapter III of Chapter 77, Wis. Stats., did make a false or fraudulent report or return for August, 2017, with intent to defeat or evade the sales tax imposed by the subchapter, contrary to sec. 77.60(7), Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than \$500, or imprisoned not more than 30 days, or both.

Count 7: FILING FRAUDULENT SALES TAX RETURN: On or about October 31, 2017, in Columbia County, Wisconsin, the defendant, as a person required to render a sales tax report or return under subchapter III of Chapter 77, Wis. Stats., did make a false or fraudulent report or return for September, 2017, with intent to defeat or evade the sales tax imposed by the subchapter, contrary to sec. 77.60(7), Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than \$500, or imprisoned not more than 30 days, or both.

Count 8: FILING FRAUDULENT SALES TAX RETURN: On or about November 30, 2017, in Columbia County, Wisconsin, the defendant, as a person required to render a sales tax report or return under subchapter III of Chapter 77, Wis. Stats., did make a false or fraudulent report or return for October, 2017, with intent to defeat or evade the sales tax imposed by the subchapter, contrary to sec. 77.60(7), Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than \$500, or imprisoned not more than 30 days, or both.

Count 9: FILING FRAUDULENT SALES TAX RETURN: On or about December 31, 2017, in Columbia County, Wisconsin, the defendant, as a person required to render a sales tax report or return under subchapter III of Chapter 77, Wis. Stats., did make a false or fraudulent report or return for November, 2017, with intent to defeat or evade the sales tax imposed by the subchapter, contrary to sec. 77.60(7), Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than \$500, or imprisoned not more than 30 days, or both.

Count 10: FILING FRAUDULENT SALES TAX RETURN: On or about January 31, 2018, in Columbia County, Wisconsin, the defendant, as a person required to render a sales tax report or return under subchapter III of Chapter 77, Wis. Stats., did make a false or fraudulent report or return for December, 2017, with intent to defeat or evade the sales tax imposed by the subchapter, contrary to sec. 77.60(7), Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than \$500, or imprisoned not more than 30 days, or both.

Count 11: FILING FRAUDULENT SALES TAX RETURN: On or about February 28, 2018, in Columbia County, Wisconsin, the defendant, as a person required to render a sales tax report or return under subchapter III of Chapter 77, Wis. Stats., did make a false or fraudulent report or return for January, 2018, with intent to defeat or evade the sales tax imposed by the subchapter, contrary to sec. 77.60(7), Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than \$500, or imprisoned not more than 30 days, or both.

Count 12: FILING FRAUDULENT SALES TAX RETURN: On or about March 31, 2018, in Columbia County, Wisconsin, the defendant, as a person required to render a sales tax report or return under subchapter III of Chapter 77, Wis. Stats., did make a false or fraudulent report or return for February, 2018, with intent to defeat or evade the sales tax imposed by the

subchapter, contrary to sec. 77.60(7), Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than \$500, or imprisoned not more than 30 days, or both.

Count 13: FILING FRAUDULENT SALES TAX RETURN: On or about April 30, 2018, in Columbia County, Wisconsin, the defendant, as a person required to render a sales tax report or return under subchapter III of Chapter 77, Wis. Stats., did make a false or fraudulent report or return for March, 2018, with intent to defeat or evade the sales tax imposed by the subchapter, contrary to sec. 77.60(7), Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than \$500, or imprisoned not more than 30 days, or both.

Count 14: FILING FRAUDULENT SALES TAX RETURN: On or about May 31, 2018, in Columbia County, Wisconsin, the defendant, as a person required to render a sales tax report or return under subchapter III of Chapter 77, Wis. Stats., did make a false or fraudulent report or return for April, 2018, with intent to defeat or evade the sales tax imposed by the subchapter, contrary to sec. 77.60(7), Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than \$500, or imprisoned not more than 30 days, or both.

Count 15: FILING FRAUDULENT SALES TAX RETURN: On or about June 30, 2018, in Columbia County, Wisconsin, the defendant, as a person required to render a sales tax report or return under subchapter III of Chapter 77, Wis. Stats., did make a false or fraudulent report or return for May, 2018, with intent to defeat or evade the sales tax imposed by the subchapter, contrary to sec. 77.60(7), Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than \$500, or imprisoned not more than 30 days, or both.

Count 16: FILING FRAUDULENT SALES TAX RETURN: On or about July 31, 2018, in Columbia County, Wisconsin, the defendant, as a person required to render a sales tax report or return under subchapter III of Chapter 77, Wis. Stats., did make a false or fraudulent report or return for June, 2018, with intent to defeat or evade the sales tax imposed by the subchapter, contrary to sec. 77.60(7), Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than \$500, or imprisoned not more than 30 days, or both.

Count 17: FILING FRAUDULENT SALES TAX RETURN: On or about August 31, 2018, in Columbia County, Wisconsin, the defendant, as a person required to render a sales tax report or return under subchapter III of Chapter 77, Wis. Stats., did make a false or fraudulent report or return for July, 2018, with intent to defeat or evade the sales tax imposed by the subchapter, contrary to sec. 77.60(7), Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than \$500, or imprisoned not more than 30 days, or both.

Count 18: FILING FRAUDULENT SALES TAX RETURN: On or about September 30, 2018, in Columbia County, Wisconsin, the defendant, as a person required to render a sales tax report or return under subchapter III of Chapter 77, Wis. Stats., did make a false or fraudulent report or return for August, 2018, with intent to defeat or evade the sales tax imposed by the subchapter, contrary to sec. 77.60(7), Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than \$500, or imprisoned not more than 30 days, or both.

Count 19: FILING FRAUDULENT SALES TAX RETURN: On or about October 31, 2018, in Columbia County, Wisconsin, the defendant, as a person required to render a sales tax report or return under subchapter III of Chapter 77, Wis. Stats., did make a false or fraudulent report or return for September, 2018, with intent to defeat or evade the sales tax imposed by the

subchapter, contrary to sec. 77.60(7), Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than \$500, or imprisoned not more than 30 days, or both.

Count 20: FILING FRAUDULENT SALES TAX RETURN: On or about November 30, 2018, in Columbia County, Wisconsin, the defendant, as a person required to render a sales tax report or return under subchapter III of Chapter 77, Wis. Stats., did make a false or fraudulent report or return for October, 2018, with intent to defeat or evade the sales tax imposed by the subchapter, contrary to sec. 77.60(7), Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than \$500, or imprisoned not more than 30 days, or both.

Count 21: FILING FRAUDULENT SALES TAX RETURN: On or about December 31, 2018, in Columbia County, Wisconsin, the defendant, as a person required to render a sales tax report or return under subchapter III of Chapter 77, Wis. Stats., did make a false or fraudulent report or return for November, 2018, with intent to defeat or evade the sales tax imposed by the subchapter, contrary to sec. 77.60(7), Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than \$500, or imprisoned not more than 30 days, or both.

PROBABLE CAUSE: I am a law enforcement officer and sign this complaint on information and belief.

Wisconsin Department of Revenue Special Agent Steven Kosmosky reports the following: He conducted an investigation concerning income tax evasion and false sales tax return filings by Timothy C. Ashley, DBA AC Auto Body. Ashley's assets did not correspond with the income reported on his (and his spouses) taxes. During calendar years 2016, 2017 and 2018, Ashley lived in rural Cambria, Columbia County, Wisconsin. During Calendar Years 2016, 2017, and 2018, his business, AC Auto Body, was also located in rural Cambria, Columbia County, Wisconsin.

Agent Kosmosky further reports the following: He reviewed Ashley's sales and use tax returns for AC Auto Body and the Ashleys' joint income tax returns. AC Auto Body had current monthly sales and use tax returns on file, most of which had been filed timely. Sales and use tax returns are due at the end of the month following the collection of the sales tax. The income reported in AC Auto Body's filings and the Ashleys' Schedule C income tax filings was consistent.

Agent Kosmosky further reports the following: On July 8, 2019, he served an administrative subpoena for bank records covering January 1, 2015, through December 31, 2018, for Timothy C. Ashley's AC Auto Body's accounts at the National Exchange Bank and Trust (NEBAT). The Bank supplied him with bank statements and cashed checks for the accounts. He found that Timothy Ashley had cashed several checks where "AC" or AC Auto Body" on the payee line had been lined out and "Tim Ashley" written in or above the payee line. Several of the checks cashed by Ashley had "fix truck" "car deductible" or other language on the memo line indicating the payment was for auto repair services.

Agent Kosmosky further reports the following: He compiled an Excel spreadsheet showing total deposits made to AC Auto Body business account, by month. He found that the business income reported on the Ashleys' income tax returns was the amount of the deposits made to the NEBAT business account. The amount of sales tax reported and remitted to Wisconsin was also the amount of the deposits made to the NEBAT business account. The deposits

made to the business account did not include any cash deposits for 2015, 2016 or 2018. There was a total of \$3950 cash deposited in the business account in October, 2017. It seemed unusual that an auto body repair shop with gross receipts of over \$150,000 in 2016 and 2018 would not have any cash payments from customers. Additionally, none of the moneys from the checks Timothy Ashley cashed was deposited into the business account, and therefore, was not reported on Ashleys' income tax returns or his AC Auto body's sales & use tax returns. Agent Kosmosky also prepared an Excel spreadsheet that summarized the information from the cashed checks by year, only including checks that appeared to be business related.

Agent Kosmosky further reports the following: He also reviewed the records from the Ashleys' personal NEBAT account. In each year, 2016, 2017, and 2018, he found multiple deposits that appeared to be from business income. The deposits were primarily personal checks but included some cash deposits. Many of the deposited checks had entries on the memo line that indicated the check was for car repair services. Several checks had variants of AC Auto Body lined out on the payee line with "Tim Ashley" written in next to it. None of that income had been reported on the Ashleys' income tax returns or on the sales and use tax returns. Agent Kosmosky also prepared an Excel spreadsheet that summarized the deposits made to the Ashleys' personal checking account that appeared to be business income for 2016, 2017, and 2018.

Agent Kosmosky further reports the following: On November 12, 2019, he interviewed Timothy C. Ashley and his wife at their residence. Tim Ashley admitted the following: Prior to 2016, he co-owned AC Auto Body with a brother and step-father. After a year, Ashley and his brother bought out their step-father. In 2015, Ashley bought out his brother and became the sole proprietor of AC Auto Body. A CPA prepared their income tax returned based on information he provided concerning AC Auto Body. His wife supplied only her (W-2) wage information. He had a CPA prepare the Ashleys' personal income tax returns and sales & use tax returns for AC Auto Body. He supplied AC Auto Body records to the CPA for tax purposes. After he became sole proprietor of AC Auto Body, he began depositing some business proceeds from the body shop into his personal checking account and did not report the income on his income tax or on the sales and use tax forms he submitted. The deposits were of both cash and personal checks paid to him by business customers. He did not collect the required sales tax on such payments. He also cashed a number of personal checks written to him by business customers for auto body service work. The cash was not deposited into his business bank account and was not reported on his income tax returns or his business' sales tax returns. All his bank accounts, business and personal, were with NEBAT. Agent Kosmosky had Timothy Ashley review the checks and deposits listed on the spreadsheets he had prepared and had Ashley identify what each check was for. Ashley identified only a handful of checks and deposits as being for other than payments for AC Auto Body services. Ashley admitted the other checks and deposits were AC Auto Body income. He admitted he did not report all of his business income to the CPA for taxes.

Agent Kosmosky further reports the following: From review of the bank records and Timothy Ashley's admissions, Agent Kosmosky determined that Ashley failed to report \$48,046 in income on his 2016 income tax return, \$40,640 in income on is 2017 income tax return, and \$47,092 in income on his 2018 income tax return. Based on that unreported income, Ashley underpaid his Wisconsin 2016 income tax by \$3355, his 2017 income tax by \$2806, and his 2018 income tax by \$3292.

Agent Kosmosky further reports the following: From review of the bank records and Timothy Ashley's admissions, Agent Kosmosky determined that Ashley under reported income and failed to pay sales tax to Wisconsin according to the following table:

<u>Month</u>	<u>Business Income Not Reported</u>	<u>Uncollected/Unpaid Sales Tax</u>
May, 2017	\$6655	\$366.03
June	5575	306.63
August	600	33.00
September	11675	642.13
October	1850	101.75
November	2782	153.01
December	125	6.88
January, 2018	6525	358.88
February	12275	675.13
March	3359	184.75
April	4250	233.75
May	4678	257.29
June	3170	174.35
July	2793	153.62
August	1900	104.50
September	1222	67.20
October	2072	113.96
November	4848	266.64

I believe the statements of Timothy C. Ashley to be truthful and reliable as they are statements against penal interest. I know that Agent Kosmosky provided the above information in the ordinary course of his duties as an investigator for the Wisconsin Department of Revenue and, therefore, believe the above information to be accurate and reliable.

Subscribed and sworn to before me on
05/29/20

Electronically Signed By:
Jordan A Lippert
Assistant District Attorney
State Bar #: 1086914

Electronically Signed By:
klaude thompson
Complainant