

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

FILED

STATE OF WISCONSIN,

DEC 22 2016

Plaintiff,

DANE COUNTY CIRCUIT COURT

v.

✓ EDDIE R. TIPTON,
5550 Cowan Road,
Flatonia, Texas 78941,
DOB: 03/15/1963, M/W,

Case No. 16CF 2604

ROBERT RHODES,
615 Longview Drive,
Sugar Land, Texas 77478,
DOB: 06/01/1968, M/W,

Case No. 16CF 2605

Defendants.


SUMMONS

THE STATE OF WISCONSIN TO SAID DEFENDANT:

The Complaint, a copy of which is attached, having been made before me accusing the defendant, Eddie R. Tipton, of the crimes of Engaging in Racketeering Activity, contrary to Wis. Stat. §§ 946.83(3), 946.84(1), 946.84(2); Theft by Fraud, as a party to a crime, contrary to Wis. Stat. §§ 943.20(1)(d) and 939.05; and four counts of Computer Crime, contrary to Wis. Stat. §§ 943.70(2)(a)1. and 943.70(2)(b)2.

You, Eddie R. Tipton, are, therefore, summoned to appear in Circuit Court at the Dane County Courthouse, 215 South Hamilton Street, Courtroom 1A, Madison, Wisconsin, to answer said Complaint on Thursday, February 16, 2017, at 10:30 a.m. In case of your failure to appear, a warrant for your arrest will be issued.

Dated this 22nd day of December, 2016.



DAVID W. MAAS
Assistant Attorney General
State Bar No. 1025522

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Defendants.

CRIMINAL COMPLAINT

Dorinda Freymiller, Special Agent with the Wisconsin Department of Justice – Division of Criminal Investigations (DCI), being first duly sworn on oath, states the following upon her information and belief:

**COUNT 1: ENGAGING IN RACKETEERING ACTIVITY
(AS TO DEFENDANTS EDDIE TIPTON AND ROBERT RHODES)**

Between and including December 29, 2007, and December 29, 2010, in the city of Madison, Dane County, Wisconsin, the above-named defendants, while associated with an enterprise, did directly conduct or participate in the enterprise through a pattern of racketeering activity, to wit: Theft by Fraud and Computer Crime; contrary to Wis. Stat. §§ 946.83(3), 946.84(1), 946.84(2).

Upon conviction of this offense, a Class E felony, the defendants may each be fined not more than \$50,000, or imprisoned for not more than 15 years, or both. Pursuant to Wis. Stat. § 946.84(2), because the defendants are alleged to have derived pecuniary value through their conduct, they may each be fined not to exceed 2 times the gross value gained or 2 times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

**COUNT 2: THEFT BY FRAUD, AS PARTY TO A CRIME
(AS TO DEFENDANTS EDDIE TIPTON AND ROBERT RHODES)**

On or about February 21, 2008, in the city of Madison, Dane County, Wisconsin, the above-named defendants, as party to a crime, did obtain title to property of the State of Wisconsin, to wit: \$783,257.72, by intentionally deceiving an agent of the State of Wisconsin by failing to disclose a fact that he had a duty to disclose, done with intent to defraud the State of Wisconsin, and which did defraud the State of Wisconsin, contrary to Wis. Stat. §§ 943.20(1)(d) and 939.05.

Upon conviction of this offense, a Class G felony, the defendants may each be fined not more than \$25,000, or imprisoned for not more than 10 years, or both.

**COUNT 3: COMPUTER CRIME
(AS TO DEFENDANT EDDIE TIPTON)**

On December 29, 2007, in the city of Madison, Dane County, Wisconsin, the above-named defendant did willfully, knowingly, and without authorization modify computer data with intent to defraud or to obtain property, contrary to Wis. Stat. §§ 943.70(2)(a)1. and 943.70(2)(b)2.

Upon conviction of this offense, a Class I felony, the defendant may be fined not more than \$10,000, or imprisoned not more than 3 years and 6 months, or both.

**COUNT 4: COMPUTER CRIME
(AS TO DEFENDANT EDDIE TIPTON)**

On November 22, 2008, in the city of Madison, Dane County, Wisconsin, the above-named defendant did willfully, knowingly, and without authorization modify computer data with intent to defraud or to obtain property, contrary to Wis. Stat. §§ 943.70(2)(a)1. and 943.70(2)(b)2.

Upon conviction of this offense, a Class I felony, the defendant may be fined not more than \$10,000 or imprisoned not more than 3 years and 6 months, or both.

**COUNT 5: COMPUTER CRIME
(AS TO DEFENDANT EDDIE TIPTON)**

On May 27, 2009, in the city of Madison, Dane County, Wisconsin, the above-named defendant did willfully, knowingly, and without authorization modify computer data with intent to defraud or to obtain property, contrary to Wis. Stat. §§ 943.70(2)(a)1. and 943.70(2)(b)2.

Upon conviction of this offense, a Class I felony, the defendant may be fined not more than \$10,000 or imprisoned not more than 3 years and 6 months, or both.

**COUNT 6: COMPUTER CRIME
(AS TO DEFENDANT EDDIE TIPTON)**

On December 29, 2010, in the city of Madison, Dane County, Wisconsin, the above-named defendant did willfully, knowingly, and without authorization modify computer data with intent to defraud or to obtain property, contrary to Wis. Stat. §§ 943.70(2)(a)1. and 943.70(2)(b)2.

Upon conviction of this offense, a Class I felony, the defendant may be fined not more than \$10,000 or imprisoned not more than 3 years and 6 months, or both.

PROBABLE CAUSE

Dorinda Freymiller is a Special Agent (SA) employed by the Wisconsin Department of Justice – Division of Criminal Investigation (DCI). Special Agent Freymiller bases this complaint upon her own investigation, the investigation done by former DCI SA Joann Joy, and investigations by other law enforcement officers performed in those officers' official capacities. Based upon this investigation and her belief, SA Freymiller states as follows:

MEGABUCKS BACKGROUND

The Megabucks lottery game (Megabucks) is a statewide lottery game run by the State of Wisconsin, Department of Revenue, Lottery Division (Wisconsin Lottery). In Megabucks, a player chooses 6 different numbers from 1 through 49 in an attempt to match those numbers to the 6 numbers drawn as the winning numbers. When purchasing a ticket, a player obtains numbers through either a "manual play" in which the player chooses the numbers, or a "quick pick" option in which a computer at the point of sale picks numbers randomly for the player's ticket. Drawings are held every Wednesday and Saturday. If a player matches 6 of 6 numbers played, the player wins the jackpot. The jackpot is pari-mutuel and paid in 25 annual installments. Winners can select a cash option jackpot prize which is equal to the total cash held for the jackpot prize pool and which is less than the estimated jackpot. Smaller cash prizes are awarded for matching fewer than all 6 numbers.

Wisconsin Lottery administers the Megabucks lottery game, as well as other statewide lottery games. Wisconsin Lottery is headquartered in the city of Madison, Dane County, Wisconsin. The winning numbers for Megabucks are selected by random number generator computers (RNGs). At all times relevant to this complaint, Wisconsin Lottery maintained three RNGs in Madison for use in the statewide lottery games, including Megabucks. Two of those RNGs would be in use at any one time, with the third held in reserve. At the time of the

drawings, Wisconsin Lottery officials would activate the draw procedure on one of the RNGs, and that RNG would output the winning numbers for the Megabucks drawing.

DECEMBER 29, 2007, MEGABUCKS WIN

On Saturday, December 29, 2007, one of the Wisconsin Lottery RNGs selected the winning numbers 7-10-35-38-45-49 for that evening's Megabucks drawing. Only one ticket sold for this drawing matched those winning numbers and won the \$2,000,000 jackpot prize. The cash option for that jackpot was \$1,147,630.

Special Agent Joy reviewed a copy of the winning ticket. That ticket shows that the purchaser manually selected six sets of numbers, and purchased the option to have those numbers in play for the four Megabucks drawings from December 22, 2007, through January 2, 2008, which included the December 29, 2007, drawing.

Special Agent Joy reviewed the Winner Claim Form paperwork for this winning ticket. The winner who presented that claim form listed his personal information as "Robert C. Rhodes, 2819 Fairway Dr., Sugar Land, TX, 77478, DOB: 06/01/1968." The claim form also included phone and social security numbers. The claim form was signed on February 21, 2008, by Robert Rhodes.

Rhodes further submitted a form 5754 Statement by Person(s) Receiving Gambling Winnings. Special Agent Joy reviewed a copy of that form, signed on February 21, 2008. In that form, Rhodes requested that the winnings from the December 29, 2007, jackpot be paid to "Delta S Holdings, LLC" of Dover, Delaware. Rhodes also submitted a Grand Prize Election Form, signed February 21, 2008, in which he requested the cash payment option.

Special Agent Joy reviewed legal filings in Dane County Case Number 08-CV-0859, which was a civil action between Delta S Holdings, LLC, as Plaintiff, and State of Wisconsin

Department of Revenue, Lottery Division, as Defendant. That case concluded with a court order directing that the proceeds of the winning ticket be paid to Delta S Holdings, LLC.

After federal and state tax withholdings, the total net cash option payment was \$783,257.72. Special Agent Joy reviewed the Wisconsin Lottery Administrative Wire Check Form for the transaction. That form shows that the net amount of \$783,257.72 was wired to a money market account with the Bank of Fort Bend, 129 Dairy Ashford Rd., Sugar Land, Texas.

RNGs IN WISCONSIN

At the time of the alleged crimes charged in this complaint, from and including December 29, 2007, through December 29, 2010, the Wisconsin Lottery used the same three RNG machines for selecting the winning numbers in the Megabucks game. Those three machines were removed from service in the fall of 2013 and were kept in a secure storage location under the control of the Wisconsin Lottery. Special Agent Joy was advised by Wisconsin Lottery Deputy Director Jean Adler that the machines were kept in secure locked storage since being removed from service, and to the best of her knowledge were not touched thereafter. On September 25, 2015, SA Joy took possession of the three RNGs as evidence and transferred them to the custody of DCI.

Special Agent Joy spoke with Saverio Maglio in this investigation. Maglio has been the Product Development Director with the Wisconsin Lottery for 12 years, and has been with the Wisconsin Lottery for a total of 26 years. Maglio said the Wisconsin Lottery received the relevant RNGs in the fall of 2004. Those RNGs were built by the Multi-State Lottery Association (MUSL). Special Agent Joy was informed that MUSL has sold RNGs to a number of other states. Maglio stated that through the course of his work for Wisconsin Lottery, he worked with defendant Eddie Tipton while Tipton was employed at MUSL. Maglio stated that Tipton and another MUSL employee, Ed Stefan, were involved in the delivery of the RNGs to

Wisconsin in 2004. Maglio stated that Tipton was present in Wisconsin on a few occasions when bi-annual security audits were conducted, and he knows that Tipton would have been granted remote access to the RNGs on occasion to service or maintain the RNGs.

Special Agent Joy also spoke to Kurt Meyer, an IT consultant administrator with the Wisconsin Lottery. Meyer explained that he knew defendant Tipton, and knew that Tipton was a security director with MUSL. Meyer told SA Joy that defendant Tipton built the software for the RNGs used by the Wisconsin Lottery that were purchased from MUSL. Meyer said that subsequent to the purchase of the RNGs, it would be periodically necessary for updates and other work to be done to the computers. Meyer said that Tipton was one of his contacts at MUSL for those purposes, and also for other IT procurements. Meyer also said that he knows defendant Tipton was involved in updating the RNG software in late 2007, prior to the winning Megabucks drawing.

ANALYSIS OF RNGs

The three relevant RNGs seized by DCI were later analyzed by Delahanty Consulting, LLC. Special Agent Joy spoke with Herb Delahanty, who was familiar with the operation of lottery machines, having done contract work with Wisconsin Lottery in the past. The analysis was done in cooperation with SeNet International Corp. In January 2016, Delahanty submitted a summary of their findings.

According to the summary, part of the analysis was focused on a dynamic link library (.dll) file found in the code of the RNGs. That file was identified as "QVRNG.DLL." The analysis showed that this .dll file was able to redirect the normal operation of the random number generator program. While the normal operation of the program would be to produce random numbers, the modified .dll file redirected to a routine that would generate predictable numbers.

Based upon his experience, Delahanty knew that when MUSL programmed new machines, the coding of the machines would have been submitted by MUSL for external verification before being put into use by the Wisconsin Lottery. The analysis compared the modified .dll file to the original .dll file in the original code that would have been submitted for external verification. That analysis showed that the modified .dll file found in the Wisconsin RNGs was not the same file that was previously submitted by MUSL for external verification.

From the analysis, it was determined that the modified .dll in place in the Wisconsin RNGs redirected the normal operation of the computer program when three conditions were met: 1) the day of the year equaled 147, 327, or 363; 2) the time of the drawing was after 8 p.m.; and 3) the day of the week was either Wednesday or Saturday. When these conditions were met, two seeds were generated based upon a number of known factors, such as range of numbers in the game, name of the RNG machine, and quantity of numbers drawn. When those known seeds were generated by the modified .dll file, the seeds would then be applied to the algorithm in the compromised .dll to select the winning numbers.

Delahanty reviewed all Megabucks drawings going back to the implementation of the suspect RNGs in Wisconsin and measured them against the three above conditions. In doing so, Delahanty identified four Megabucks drawings that met the three conditions above:

- 1) December 29, 2007;
- 2) November 22, 2008;
- 3) May 27, 2009; and
- 4) December 29, 2010.

Because these four dates all fell on either the 147th, 327th, or 363rd day of the year, the drawings were all held after 8:00 p.m., and the day of the week was either a Wednesday or a

Saturday, the selections of winning numbers in those drawings were altered due to the modified .dll code.

Delahanty was able to reproduce the circumstances of the drawings on the above four dates in his analysis. By reproducing the conditions of the drawing on the original RNGs, Delahanty generated the exact same numbers that were drawn by the RNGs on those actual dates, including the winning numbers of 7-10-35-38-45-49 for the December 29, 2007, drawing won by Rhodes.

Delahanty explained in his report that any individual who wanted to exploit the modified code would have needed to be familiar with each of the factors that went into the generation of the predictable seed number and how each of those factors were used to create the seed. Even if someone had the source code .dll, that person would not have had enough information to predict the numbers that would be drawn.

STATEMENT OF DEFENDANT ROBERT RHODES

On December 9, 2015, defendant Robert Rhodes met with SA Joy, Wisconsin Assistant Attorney General David Maas, Iowa Assistant Attorney General Robert Sand, and Iowa Special Agent Don Smith pursuant to a proffer agreement to provide a statement regarding his involvement in these offenses.

Defendant Rhodes stated that he has known defendant Tipton since the early 1990s when they were involved in business together. He stated that they remained in business together until approximately 2001. Rhodes said he knew around that time that defendant Tipton moved to Iowa and began employment with MUSL. Rhodes said that even after Tipton moved to Iowa, they remained close and Rhodes would travel there a few times per year. Rhodes said that while Tipton worked at MUSL he would occasionally talk about his work and some of the technical challenges.

Rhodes stated that in October 2007, he was with Tipton in either Iowa or Houston, Texas. While they were together, Tipton told Rhodes that there was a way that Tipton could give Rhodes winning lottery numbers and asked if they should take advantage of that. Rhodes recalled telling Tipton that if he had that ability, he probably should take advantage of it. Rhodes said that at that time, he was unaware that Tipton was involved in similar schemes elsewhere.

Rhodes said that he made plans to return to Iowa in December 2007. When he got to Iowa, Rhodes said that Tipton gave him several 3"x5" index cards with series of numbers written on them. Rhodes said that the cards had lots of repetitions of numbers among the series. Rhodes said that Tipton told him one of those sets of numbers would work, but that he should play them all. Tipton gave Rhodes instructions to play these numbers on the Wisconsin Megabucks game, and that he should pay to have the numbers active over three or four consecutive drawings. But Rhodes also said that Tipton specifically told him that one of those drawings needed to be the December 29, 2007, Megabucks drawing.

Rhodes explained that he rented a car in Des Moines and drove to Wisconsin. Once in Wisconsin, Rhodes purchased multiple lottery tickets for several Megabucks drawings, making sure to use the numbers provided by Tipton and making sure to play the December 29, 2007, drawing. After purchasing tickets from various stores around Southwest Wisconsin, Rhodes drove back to Iowa and later flew back to Texas.

Rhodes said that when he returned to Texas, he checked the winning numbers online and realized that he won the December 29, 2007, Megabucks jackpot using the numbers supplied by Tipton. He made arrangements for the creation of Delta S Holdings, LLC to receive the winnings, and he filled out claim paperwork using his name and personal identifying information to process the winning ticket. Rhodes had to fly back to Wisconsin to deliver the ticket to his lawyer who then filed the legal paperwork for payment into the Delta S Holdings account.

Rhodes said that he and Tipton had an agreement that they would split the money from the ticket 50/50. The money was transferred to his bank in Texas. Rhodes said that when he and Tipton got together, he would withdraw large sums of cash from the account and give it to Tipton in payment of his share.

Rhodes said that Tipton explained how he was able to know the winning numbers. Rhodes said that Tipton explained he created a “.dll” file that could be called at will by an executable on the RNGs. Tipton further explained to Rhodes that he wrote the code and was able to compile the code in front of a video camera while an external auditor was monitoring online. Tipton said he was able to put in his own .dll with modified code and that the file had the exact same size and checksum as the legitimate code. According to Rhodes, Tipton said that once this was created into the source code of the machines, it would be used as the source code when copied onto any other RNG.

Rhodes also said that in 2010, Tipton again approached him about exploiting the Wisconsin lottery. Rhodes said he was not very enthused about the idea at the time, and felt like they would be tempting fate if they did it again. Nonetheless, Rhodes said he agreed to it. Rhodes said that Tipton gave him only one or two notecards with fewer numbers than for the 2007 incident. Rhodes believes Tipton gave him these numbers while they were in Texas together. Rhodes said he flew to Chicago on December 27, 2010, rented a car, and drove to Wisconsin. Rhodes says he bought lottery tickets for the December 29, 2010, Megabucks game on December 28. Rhodes said that he was having second thoughts about the scheme while he was purchasing tickets. Rhodes said that as a result, he only played some of the number series from the index cards given to him by Tipton. After purchasing the tickets, Rhodes drove back to Chicago and flew home on December 29, 2010.

Rhodes said he later checked online and discovered that the winning numbers for the December 29, 2010, Megabucks drawing appeared in one of the series of numbers on the index cards from Tipton that Rhodes chose not to play. Had Rhodes played all the number series on the index cards, he would have again won the Megabucks jackpot.

In January or February 2011, Rhodes said that Tipton came to see him in Houston. Rhodes said he apologized for not playing all of the numbers in the Megabucks drawing. Rhodes said that Tipton then produced a paperback book. From inside the pages of the book, Tipton pulled out a lottery ticket from the Iowa Hot Lotto game. Tipton explained that this was the winning ticket from the December 23, 2010, Hot Lotto drawing in Iowa. The ticket was the sole winner of the \$16,500,000 jackpot. Rhodes said that Tipton told him he was thinking of having his brother, Tommy Tipton, redeem the winning ticket, but Eddie Tipton had concerns because Tommy Tipton won a 2005 lottery in Colorado and had been interviewed by the FBI in connection with that win. Rhodes said Eddie Tipton then gave Rhodes the ticket and told Rhodes that Rhodes could claim it.

Rhodes said he was upset with defendant Tipton because Tipton was jeopardizing Rhodes by having other people involved. Rhodes said that he and Tipton talked more, and agreed to split the Iowa ticket the same as they split the previous winning ticket in Wisconsin. Rhodes then explained the steps he took to unsuccessfully redeem the Hot Lotto ticket through various third parties. That jackpot was ultimately not paid out on the ticket, and instead Iowa launched a criminal investigation into the circumstances surrounding that ticket.

STATEMENT ON NON-CONSENT

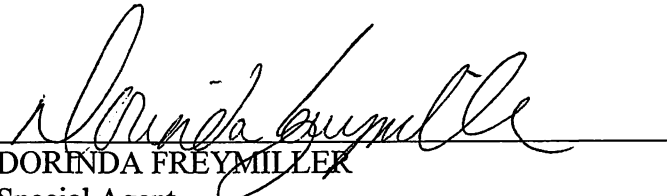
Your complainant is aware that at no time did the State of Wisconsin or Wisconsin Lottery give the defendants authorization to modify or alter the computer data for the winning Megabucks lottery numbers on December 29, 2007, November 22, 2008, May 27, 2009, nor

December 29, 2010. Further, the State of Wisconsin and the Wisconsin Lottery would not have disbursed the \$783,257.72 for the December 29, 2007, win had the defendants disclosed the circumstances surrounding the selection of the winning numbers and the alteration of computer data. The State of Wisconsin and the Wisconsin Lottery were thus defrauded by the omissions of the defendants.

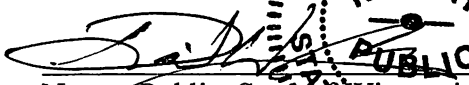
STATEMENT ON NON-RESIDENCY

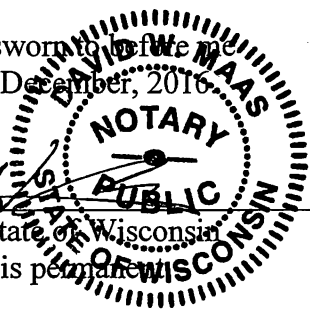
Special Agent Freymiller states that, based upon her review of the investigative file and investigations of other law enforcement officers, neither defendant Tipton nor defendant Rhodes were publicly a resident of the State of Wisconsin at any time relevant to this case, or since the criminal activity alleged above.

Dated this 22nd day of December, 2016.



DORINDA FREYMILLER
Special Agent
Wisconsin Department of Justice

Subscribed and sworn to before me
this 22nd day of December, 2016.


Notary Public, State of Wisconsin
My commission is permanent.



APPROVED FOR FILING:


DAVID W. MAAS
Assistant Attorney General
State Bar No. 1025522